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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 354. 109

THE PENSACOLA ICE COMPANY, PLAINTIFF IN ERROR,

vs.

DAVID PERRY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

FILED OCTOBER 8, 1883.

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1 *Title of Cause.*

Record in the circuit court of the United States for the fifth judicial circuit, northern district of Florida, at Pensacola, Florida, in a certain cause at common law therein, wherein David Perry, who is a citizen of the State of California, is plaintiff, and the Pensacola Ice Company, a corporation organized under and having its place of business and domicil- in, and which is a citizen of, the State of Florida, is defendant.

Be it remembered that on the 24th day of February, in the year of our Lord one thousand eight hundred and eighty-two, came David Perry, the plaintiff in the cause aforesaid, by his attorney, E. A. Perry, Esq., and filed in the clerk's office of the circuit court aforesaid his *præcipe* for a summons *ad respondendum* in the words and figures following, to wit:

Præcipe.

Circuit Court of the United States, Fifth Judicial Circuit, Northern District of Florida, at Pensacola, Fla.

DAVID PERRY
vs.
THE PENSACOLA ICE CO. } Ejectment. No. 35.

The clerk of said court will please issue summons *ad re-*
2 *spondendum* in above-stated case, returnable to rule day of March, 1882.

Feb. 24, 1882.

(Signed) E. A. PERRY,
Pl'ff's Att'y.

Property Claimed.

Statement of description of property and amount of mesne profits claimed, and of whom claimed, a copy of which the clerk will please annex or endorse on the writ to be served with it.

So much of the water front of Pensacola as is occupied by defendant by a building used as an ice-house and other structure- as lies between the extension into the bay of the east line of the lot in Pensacola known as the "Coleman" lot and the wharf known as the "Commendencia Wharf."

Mesne profits, $300.00 per year from Jan. 1, 1881, claimed of defendant.

Endorsement: Filed February 24, 1882.

Thereupon, on the 24th day of February, A. D. 1882, there issued out of the clerk's office of said court a summons *ad respondendum* to the Pensacola Ice Company, defendant in this cause, in the words and figures following, to wit:

3 *Summons.*

United States Circuit Court, Fifth *Fifth* Judicial Circuit, Northern District of Florida.

The President of the United States to the marshal of the northern district of Florida, Greeting:

Your are hereby commanded to summon the Pensacola Ice Company, if they be found in your district, to be and appear before the circuit court of the United States, fifth circuit and northern district of Florida, at the rule day of said court, to be held at the clerk's office, in the city of Pensacola, on the first Monday of March next, to answer unto David Perry, in said court, on a plea of ejectment, wherein the plaintiff claims damages to the amount of three hundred dollars.

And have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of this court, at the city of Pensacola, in said district, this 24th day of February, A. D. 1882.

[L. S.] (Signed) W. W. WHARTON, *Clerk.*

E. A. PERRY, Esq., *Plaintiff's Att'y.*

Property Claimed.

So much of the water front of Pensacola as is occupied by defendant by a building used as an ice-house, and other structures as lies between the extension into the bay of the east line of the lot
4 in Pensacola known as the "Coleman lot," and the wharf known as the "Commendencia wharf."

Mesne profits, $300.00 per year from Jan. 1st, 1881, claimed of defendant.

And on the 24th day of February, A. D. 1882, was filed in said court the marshal's return of service of said summons in the words and figures following, to wit:

Marshal's Return.

Received in office 24 February, 1882.

Executed the within writ by reading the original and delivering a true copy of the same to W. Phorton, manager of the Pensacola Ice Company, of Pensacola, in the absence of the president of said company, at their usual place of business, this 24 day of February, A. D. 1882.

(Signed) J. H. DURKEE,
U. S. Marshal.
JAMES WILLIAMS,
U. S. D. Marshal.

Endorsement: Issued Feb. 24, 1882. Returnable March 6, 1882. Returned & filed Feb. 24, 1882.

And on the 6th day of March, A. D. 1882, came the defendant herein, by their attorney, R. L. Campbell, Esq., and entered their appearance in this cause, in the words and figures following, to wit:

5 *Defendant's Appearance.*

In U. S. Circuit Court, Northern District of Florida.

DAVID PERRY
vs.
PENSACOLA ICE CO. } Ejectment. No. 35.

I appear for defendant.
March 6, 1882.
(Signed) R. L. CAMPBELL, *Att'y.*

Endorsement: Filed March 6, 1882. (Signed) W. W. Wharton, clerk.

And on the 6th day of March, A. D. 1882, came the plaintiff, by his attorney, E. A. Perry, Esq., and filed his declaration in this cause, in the words and figures following, to wit:

Plaintiff's Declaration.

Circuit Court of the United States, Fifth Circuit, Northern District of Florida, at Pensacola.

DAVID PERRY
vs.
THE PENSACOLA ICE CO. } Ejectment. No. 35.

David Perry, the said plaintiff, who is a citizen of the State of California, by his attorney, E. A. Perry, complains of the
6 Pensacola Ice Company, a corporation organized under and having its place of business and domicile in, and which is a citizen of, the State of Florida and of this district, and which has been summoned to answer the plaintiff in an action of ejectment for that—

Whereas the defendant is in possession of a certain tract or parcel of land which was formerly covered by water, situate and lying and being in said State and said district, and in the county of Escambia, to wit: So much of the water front of Pensacola as lies between the extension into the Bay of Pensacola of the west line of the parcel of ground in Pensacola known as the Coleman grant (the same being the parcel granted to James Coleman, by the Spanish Government, on the 20th day of January, 1807), and the wharf extending into the Bay of Pensacola, known as "Commendencia wharf," containing about three acres, and of value exceeding five hundred dollars; to which said plaintiff claims title. And the defendant has received the profits of said premises since June 1st, 1881, of the yearly value of $300.00, and refuses to deliver the possession of said premises to the said plaintiff, or to pay him the profits thereof.

3 *Summons.*

United States Circuit Court, Fifth *Fifth* Judicial Circuit, Northern District of Florida.

The President of the United States to the marshal of the northern district of Florida, Greeting:

Your are hereby commanded to summon the Pensacola Ice Company, if they be found in your district, to be and appear before the circuit court of the United States, fifth circuit and northern district of Florida, at the rule day of said court, to be held at the clerk's office, in the city of Pensacola, on the first Monday of March next, to answer unto David Perry, in said court, on a plea of ejectment, wherein the plaintiff claims damages to the amount of three hundred dollars.

And have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of this court, at the city of Pensacola, in said district, this 24th day of February, A. D. 1882.

[L. S.] (Signed) W. W. WHARTON, *Clerk.*

E. A. PERRY, Esq., *Plaintiff's Att'y.*

Property Claimed.

So much of the water front of Pensacola as is occupied by defendant by a building used as an ice-house, and other structures as lies between the extension into the bay of the east line of the lot
4 in Pensacola known as the "Coleman lot," and the wharf known as the "Commendencia wharf."

Mesne profits, $300.00 per year from Jan. 1st, 1881, claimed of defendant.

And on the 24th day of February, A. D. 1882, was filed in said court the marshal's return of service of said summons in the words and figures following, to wit:

Marshal's Return.

Received in office 24 February, 1882.

Executed the within writ by reading the original and delivering a true copy of the same to W. Phorton, manager of the Pensacola Ice Company, of Pensacola, in the absence of the president of said company, at their usual place of business, this 24 day of February, A. D. 1882.

(Signed) J. H. DURKEE,
U. S. Marshal.
JAMES WILLIAMS,
U. S. D. Marshal.

Endorsement: Issued Feb. 24, 1882. Returnable March 6, 1882. Returned & filed Feb. 24, 1882.

And on the 6th day of March, A. D. 1882, came the defendant herein, by their attorney, R. L. Campbell, Esq., and entered their appearance in this cause, in the words and figures following, to wit:

5 *Defendant's Appearance.*

In U. S. Circuit Court, Northern District of Florida.

DAVID PERRY
vs.
PENSACOLA ICE CO. } Ejectment. No. 35.

I appear for defendant.
March 6, 1882.
(Signed) R. L. CAMPBELL, *Att'y.*

Endorsement: Filed March 6, 1882. (Signed) W. W. Wharton, clerk.

And on the 6th day of March, A. D. 1882, came the plaintiff, by his attorney, E. A. Perry, Esq., and filed his declaration in this cause, in the words and figures following, to wit:

Plaintiff's Declaration.

Circuit Court of the United States, Fifth Circuit, Northern District of Florida, at Pensacola.

DAVID PERRY
vs.
THE PENSACOLA ICE CO. } Ejectment. No. 35.

David Perry, the said plaintiff, who is a citizen of the State of California, by his attorney, E. A. Perry, complains of the
6 Pensacola Ice Company, a corporation organized under and having its place of business and domicile in, and which is a citizen of, the State of Florida and of this district, and which has been summoned to answer the plaintiff in an action of ejectment for that—

Whereas the defendant is in possession of a certain tract or parcel of land which was formerly covered by water, situate and lying and being in said State and said district, and in the county of Escambia, to wit: So much of the water front of Pensacola as lies between the extension into the Bay of Pensacola of the west line of the parcel of ground in Pensacola known as the Coleman grant (the same being the parcel granted to James Coleman, by the Spanish Government, on the 20th day of January, 1807), and the wharf extending into the Bay of Pensacola, known as "Commendencia wharf," containing about three acres, and of value exceeding five hundred dollars; to which said plaintiff claims title. And the defendant has received the profits of said premises since June 1st, 1881, of the yearly value of $300.00, and refuses to deliver the possession of said premises to the said plaintiff, or to pay him the profits thereof.

And whereas the said defendant is in possession of the undivided half of so much of the water front of Pensacola as is occupied by defendant by a building used as an ice house and other
7 structures as lies between the extension of the west line of the parcel of ground in Pensacola known as the "Coleman grant" and the wharf known as "Commendencia wharf," containing about three acres, said undivided half being of value exceeding five hundred dollars, to which said plaintiff claims title. And the defendant has received the profits of said premises since Jan. 1st, 1881, of the yearly value of $300.00, and refuses to deliver the possession of the said premises to said plaintiff or to pay him the profits thereof.

(Signed) E. A. PERRY,
Pl'ff's Att'y.

Endorsement: Filed March 6, 1882. (Signed) W. W. Wharton, clerk.

And on the first day of April, A. D. 1882, came the defendant herein, by their attorney, R. L. Campbell, Esq., and filed their demurrer to the declaration of plaintiff herein, filed in this cause, in the words and figures following, to wit:

Defendant's Demurrer to Plaintiff's Declaration.

Circuit Court of the United States for the Northern District of Florida.

DAVID PERRY
vs.
THE PENSACOLA ICE COMPANY. } Ejectment. No. 35.

8 The defendant, by its attorneys, R. L. Campbell, says that the plaintiff's declaration is bad in substance, and, for cause of demurrer, alleges the following:

That it does not set forth a good cause of action against the defendant.

(Signed) W. A. BLOUNT &
RICH'D L. CAMPBELL,
Def't's Att'ys.

STATE OF FLORIDA, *Escambia County:*

S. C. Cobb, who is the president of said defendant, being duly sworn, says that the foregoing demurrer is not interposed for the purpose of delay.

(Signed) SEWELL C. COBB.

Sworn to and subscribed before me this 1st day of April, A. D. 1882.

[L. S.] (Signed) W. W. WHARTON,
Clerk U. S. Circuit Court.

I, R. L. Campbell, attorney of the defendant in the above-stated

case, do hereby certify that I believe the foregoing demurrer to be well founded in law.

(Signed) RICH'D L. CAMPBELL,
Def't's Att'y.

Endorsement: Filed April 1st, 1882. (Signed) W. W. Wharton, clerk U. S. circuit court.

9 And on the third day of March, A. D. 1883, came the plaintiff, by his attorney, E. A. Perry, Esq., and filed his motion to set aside defendant's demurrer, in the words and figures following, to wit:

Motion.

United States Circuit Court.

DAVID PERRY
vs.
THE PENSACOLA ICE CO. } Ejectment. No. 35.

The plaintiff moves the court to set aside the demurrer of defendant to plaintiff's declaration, because said demurrer is filed or delivered without any statement of some substantial matter of law intended to be argued.

March 3, 1883.

(Signed) E. A. PERRY,
Pl'ff's Att'y.

Endorsement: Motion to set aside defendant's demurrer entered upon motion docket March 3d, 1883. Filed March 3, 1883. (Signed) W. W. Wharton, clerk.

And on the sixth day of March, A. D. 1883, at a regular term of said circuit court, being a day of said term, the following proceeding was had:

Leave to Correct Clerical Error.

10 DAVID PERRY
vs.
THE PENSACOLA ICE CO. } Ejectment. No. 35.

This cause coming on to be heard upon the demurrer hereinbefore filed in this cause, leave is granted to plaintiff to correct a clerical error in his declaration by changing 1820 to 1807.

And on the eighth day of March, A. D. 1883, came the defendant, by his attorney, Rich'd L. Campbell, Esq, and filed his plea in this cause, in the words and figures following, to wit:

Plea of Defendant.

In the Circuit Court of the United States for the Northern District of Florida.

DAVID PERRY, who is a Citizen of the State of California,
vs.
THE PENSACOLA ICE COMPANY, a Corporation Existing under the Laws of the State of Florida. } Ejectment. No. 35.

The defendant, by its attorney, R. L. Campbell, for plea to the said action, says it is not guilty of the wrong and injury in manner and form as set forth in the plaintiff's declaration; and of this it puts itself upon the country.

11 (Signed) RICH'D L. CAMPBELL,
Att'y for Def't.

STATE OF FLORIDA, *Escambia County:*

S. C. Cobb, president of said Pensacola Ice Company, being duly sworn, says that his foregoing plea is true.

(Signed) S. C. COBB,
Pres. Pen. Ice Co.

Sworn to and subscribed before me this 8th March, A. D. 1883.

[L. S.] (Signed) W. W. WHARTON, *Clerk.*

Endorsement: Filed March 8th, A. D. 1883. (Signed) W. W. Wharton, clerk.

And thereafter, on the 12th day of March, A. D. 1883, at a regular term of said circuit court, being a day of said term, the following proceedings were had:

Trial.

DAVID PERRY
vs.
PENSACOLA ICE COMPANY. } Ejectment. No. 35.

This cause being called, came the parties thereto, by their respective counsel, and issue having been joined, thereupon came a
12 jury, to wit, S. S. Harvey, W. D. McLay, R. K Williams, J. D. Bowman, L. Washington, W. S. Coleman, Henry Scott, John Pollis, A. Cook, Robert Thomas, Jacob Kalin, F. Palmis, who, having been tried, sworn, and empaneled to try this cause, the parties herein, by their attorneys, proceeded to submit their evidence, and, argument of counsel being had, the hour of adjournment arrived, and it was—

Ordered, That said court adjourn until Tuesday, March 13, A. D. 1883, at 10 o'clock a. m.

And on the 13th day of March, A. D. 1883, at a regular term of

said circuit court, being a day of said term, the following proceedings were had:

DAVID PERRY
vs.
PENSACOLA ICE COMPANY. } Ejectment. No. 35.

The hearing of this cause being proceeded with, attorneys for defendants herein submitted their testimony to the jury, and, after argument of attorneys and the charge of the court, the jury retired to consider their verdict, when, after due deliberation, the jury came into court and returned the following verdict, to wit:

Verdict.

13 "We, the jury, find the defendant guilty of the trespass and ejectment complained of in the plaintiff's declaration."

Decree.

Whereupon, it is therefore considered by the court that the plaintiff have and recover the possession of the premises described in the declaration, to wit:

A certain tract or parcel of land which was formerly covered by water, situate and being in the State of Florida and said district, in the county of Escambia, to wit, so much of the water front of Pensacola as lies between the extension to the Bay of Pensacola, of the west line of the parcel of ground in Pensacola known as the Coleman grant (the same being the parcel granted to James Coleman by the Spanish government on the 20th day of January, 1807), and the wharf extending into the Bay of Pensacola, known as Commendencia wharf, together with their costs in this behalf expended, to be taxed, and that plaintiff have his writ of possession and execution therefor.

And on a further day, to wit, on the 16th day of March, A. D. 1883, came the defendants in this cause, by their attorneys, R. L. Campbell and Wm. A. Blount, Esquires, and filed their bill of exceptions to the charge of the court made and taken in this cause, in the words and figures following, to wit:

Defendant's Bill of Exceptions.

14 In the Circuit Court of the United States in and for the Northern District of Florida, at Pensacola.

Be it remembered that at a term of the circuit court of the fifth judicial circuit of the United States in and for the northern district of Florida, held at Pensacola on the 13th day of March, A. D. 1883, a cause therein pending, wherein David Perry was plaintiff and Pensacola Ice Company was defendant, came on to be heard before Hon. Thomas Settle, judge of said court, at which day came the parties by their respective attorneys.

And thereupon the said issues in manner aforesaid joined between

the said parties came on to be tried, and the jurors of the jury aforesaid, whereof mention is within made, being called, likewise came and were sworn to try the issues in manner aforesaid joined, and thereupon the plaintiff, to maintain the issues on his part, produced and offered in evidence the following papers, to wit:

(Here follows diagram, marked p. 15.)

15½ Don Vincente Sebastian Pintado, agrimenson general de la Florida Occidental, certifico: Que en vintud de Auto proviedo en quinse del covriente Mes y Ano, per el Senor D'n Juan Ventura Morales, yutend la genl y subdelegado de la superintenda gral Juer de Arribadas, de tierras y Solares realingos en ista Provincia, dislinde mli y Amojone a farvor del Prisbitero D'n Santiago Coleman, cura y vicarrio de esta plasa, un solar situado en la misina, que campro de la real Hacienda lindando per la parti Septertuonal conla circa del pateo del Quartet y parte de la Plasa de Armas per la meridional com la Vielladel aqua de la Bahia de Pansacola en la marea alta, per cuya parte de be qued un libel el paso sequn el espirita del alta unto, par la parti oriental com el solar concedido a D'n Joaquin Barcla en dies y alho de Abril de mie achocien tos y quarto y terreno realengo y por la occidental con la calle reservado entre la cercadel patio y jardin de gobierno y el lunile mas sesta del sola del interesad paralelo a la alta cerca, cuia calle es de quarareta y dos pies y medio inglesses de aricho.

Ellado immediate a la cerea del quartet y plasa de armar, es ciento quarenta y crinco pies linsales de Landres desigido al N. 72° 40′ E., de la linyila declimande esta 7° 50′ al N. E. Ellado
16 immediate al solar de Barcla y terran realingo es perpendicular al Autanatho, y el que inira ocia.

A la casa de gobierno forma un angalo obtuso de 92° 27′ 15″ con el premiero camo mas clamanto manifestan el Plano que anteceda en el que da figurado el solar anoladas las dimenciones de sus lados en pies lineales de Londres Medida dalgar de esta Poblaciore represtados las actuales cereas y los deneas confines naturales y artificiales y para que consteldo y la presente en la plasa do Pansacola a los dies y nueba dias del mes de cuero de niel ochocientos y Sieta anos.

VICENTE SEBAST'N PINTADO.

Es copia del plano y delig'l apeo original que se halla anera del expedicente del aseneto y se Saeapara unir at lituto en forma manlado despachar por el anto ya citado y quela registrod in el Lib. VII fol. 19 y b't A, No. 1796, Pansacola y tra et supra.

VINCENTE SEBAST'N PINTADO.

D'n Juan Ventura Morales Intendenta Interino y superintendente General Subdelagodo Juer de Arribadas de tierras y Solares recelengos en esta Provincia de la Florida Occidental.

Por quarte par parte del Presbitera D'n Santiago Coleman cura de esta Plasa Vicano y Juer Eclenastico de la Provincia se soliceto la

reparcion de la casa de su Morala por encontrarse en estado
17 de ruina para poderla occupar y se determino en Juarita de Real Hacienda cele Cado en once de Octobre del ano prociena pasado de que se instrayo al Dr. Jugeniero commandante en officio de dus y oclei del mismo mes, y como por su contistaein del Venitt Le Opone Abrentanente y propreso Le Alguila una casa particular para Aloranieneto del secre cura vicaies, se le dis aviso cona fechu del vierrtt y miedle para que se proporcionasa un aloxamiereto regular, y un su respuesta de brimita y uno del mismo mes espuso le dificalloso que le seria uncontian una casa como da y las ininidiacuries de la y glesia, a no ser por un crecido al guiler y que la neciredad in que se hallaba por altinio recurso proposia compara de su ceneta la referrida casa pa redificarla a su costa Sienfre que se le Vendiese por su Justo valor Tratado dicha propercion en Junta de real Hacienda celebrada en venite y dos de Nosombre siquierte se acordo mas conveniente la venta de la refinda casa al Presbiterio D'n Santiago Coleman haciendo est mair por pintos y que crevian mas ventagoso el alono de quinse pisos mensuade de Cuerata de la Real Haciendo Cuno el mas reducio Alguiler podia Sembarse Atendida la carestia que se experimentaba compulsados copias
18 certificado de los oficios que mediaron y de la Jureta Como Le Mando, se formes un expediente en que por Anto de de dos de Dos'e Le Mardo tambeare agregar copia certificada del oficio del sov Ingeniero commandante en que inserto el calculo del costo de la redificacion de dicha casa y se nando proceder indicialarente a la tasacim de la casa y terrero en que esta situado por los malstro Carpertero y Albanel Franc'o Simora y Aliguel Luce y el Herron del Rey Diego Palmer para las obeas de so oficio y el agronersor gral D'n Vincente Sebastian Pintado para solo el terreno y resultundo que la estimacion heaha por los referridos quatro Paritos Asendio a quatrocientos Seis pesos de plata fuata se dio vista el Sor Fiscal de Real Hacienda que se conformo con ella y fidio la expedicion del lilato previs el sutro en Arcas reales de la esprisado contidad y por decreto de once del misnos messe instrajo el son cuia vicano que se conferrio per sa resperesta y en siguida cen dictamer del son niaseson espedi uno duto en doce del mismus mes cayo tenor es el siquiente. Antos y vistos conlo representado posel son Mincestro Fiscal de Real Hacienda, y espuerto por el sor vicaria eclesiastico de esta provincia Presbitero D'n Santiago Colman se aproreba la estimacion de la casa que est habita como cura de esla
19 parogina y presis el entero de su importe en caxas reales en certificacines de credito de ellas que se admitera por las rasnes que expone, despachese el correspondia to titulo verificandore desde el dia en que haga dicho erltero el aloms del aliguilar de queuse peros asiguado en la Juota de Real Hacienda verificado el entero en estas reales casas de los quatrocentos seis pesos en que se estimero la casa y solar exprasada para el sor cura vicano en quinse del misino mes de disc segunacredita la certificasion del son Minestro Tesorero, agregada a dieshas deliquericias recurrio con el referrido son vicaris recurrio con el referrido son vicaris pidiendo se mandose al agrimensor general De Vicente Sebastian Pintado mideise el terroro

expresada extendisudo la dimencion al igual do los demas terroros que miran a la playa, y por anto del viente del referrido Décembre se mando que dicho agrimessor in formas a y diese rason de la extension del terreno sequn el Plano de la Poblacion y lo execato exponievido que so adminisetia interposicion de otro entre sus acrecales cereas y la orilla del aqua y que debia tener por aquilla parte la extencion g's permite su localidad, se paso ala dista del sor fiscal cun el espidicote por decrete del vente y tres y por su represealacion del
viente y cuatro se conformes con que el limete fuese hasta la
20 playa derando el paso libra sualta neasea y por anto de quiense
del corriente mes cacuerdo con el sor mi asesor tube a bien conformedorne con lo informado por el sor agrimensor gral de la proviciancia y expuesto por el sor miniesteo Fiscal de real Hacienda declarar que la pro fiere didad del solar de que se trata debe estendersa hasta la orilla del mar dexando espacio suficiente para transitara en alta marea coula condicion de ge mienstra subsista el actual par que para custodiar cas madaas del rey y se tenga por conomeilte hacer aso de la porcion del tereno que esta fuera de las cereas para algur objeto delsubicis no se ha le hacer novedad del estado actual para que pueda quedar libre el transito que dauden siempre la propuedad declarada el senor cura vicario, y maude espedir el titulo previa la forniacion del plano que ha de acompanar a el quedando otra en al espediente que ha de acompanar al el con le correspondiente explicacion que disce que por la paite semptrional huida con la cerca del quartet y parte de la Plasa de Armas cor la estensino de ciento quaruto y cinceopies treneales de Londres, par la meridional con la orilla del aqua de la Bahia de Pansacola en la mara alta dexa ubra el paso, por la oriental el solar conedido a D'n Joaquin Varela y terreno
reallenjo y por la occidental car la calle reversado entra la cerea
21 del Patis y Jardin del Goverino y el limite mos a vesta del solar del Interesado paralelo a discha cercia cuya carle es de quarenta y dos pies y medio ingleses de ancho. Por tanto asaredo de las facultudes que el Rey mesteo sor dios to guarde one tiene conferidas y en sa real nombre concedo al referido Presbitero D'n Santiago Coleman curia de esta Plasa Vicario y Juer eclesiastico de esta Provincia el referida tereno taxo los linderos y dimenciones que van expresados y cinetien del Plano ya citado para q'e coneo suyo propio lo posea disfrate venda o suagene a su voluntad comos que lo ha comprado de la real Hacienda, en cuya consiquercia lo diclaro y imparto entera y duicto dominia y le doy poder har a q'l touvesa porecion en la gile le pongo y amparo lenga, concalidad y cindicion que ha de observar y cemplér lo dispresto en la instrucion formada y publicanda por la Intendencia General de la retrocedida provincia de la Louisiana en 17 de Julio de 1799 y quedara sugeto a las reglas de policia y orderansas municipales paro lo que toca el buenorden en fe de lo qual marido despachar el presente firmado de mi neareo, sellado, con el de mis armas y referadado del impracesto secratano internio de esta
Intendencia General en cuya oficiena como en la del min-
22 cestro de Real Hacienda de esta plasa quedara registrado y tonsara la rason Dado en Pensacola a venite de enero de mil ochocievtos Diete—Judu Ventura Morales.

(Signed) FRAN'CO GUHINES DE ARROYO.

Queda registrado el titulo antecedente en el libro destinado a este fin en la secrevia interinamente a mi cargo a fox's 127, 128, y 129, a que me remito Pansacola veinte y dos de Enere de mil ochocientos y siete.

(Signed) FRANC'O GUTIERRES DE ARROY.

Eno la contaduria principal de esta Provincia se tomo rason del antecedente titulo a fox's 81 b'ta 82 y 83 en el libro destinado a este fin Pansacola veinte y tres de Enero de mil ochocientos siete.

(Signed) JUAN FRAN'CO ARNAULD DE COURVILLE.

STATE OF FLORIDA, *Escambia County:*

I, F. E. de la Rua, keeper of the Spanish archives of West Florida, do hereby certify that the foregoing nine (9) pages contain a true and perfect copy in the matter of the title of James Coleman to a lot of land as the same remains of record in the Spanish language in said archives in Book "A," at pages 175 to 177.

23 In witness whereof I hereunto set my hand and private seal (my seal official being lost or misplaced), at Pensacola, this 21st day of August, A. D. 1874.

(Signed) F. E. DE LA RUA, [SEAL.]
Keeper Spanish Archives of West Florida.

Endorsement: Filed March 4, 1880. (Signed) Geo. E. Wentworth, clerk.

24 Which aforesaid deed, being translated into the English language, is as follows, to wit:

Translation.

D'n Vicente Sebastian Pintado, surveyor general of West Florida, certifies that by virtue of the decree of the 15th of the present month and year, from D'n John Ventura Morales, intendent general, subdelegate of the general superintendence, judge of Arribadas, of royal lands and lots in this province, he surveyed, measured, and marked in favor of the presbyter, D'n James Coleman, curate and vicar of this place, a lot situated in said place, which he bought from the royal exchequer, bounded northerly with the court fence of the Quarters and by a portion of the Square of Arms; southerly with the margin of the Bay of Pensacola at high tide, on which side a free passage is to be left, according to the spirit of said decree; easterly with the lot granted to D. Joaquin Barela on 18th April, 1804, and vacant lot, and westerly with the street reserved between the court fence and government garden and the most western limit of the lot of the interested party parallel with said fence, which street is 42½ English feet wide. The side immediate to the fence of the Quarter and Square of Arms is 145 lineal English feet, leading north 72° 40′ E. of the compass, with a variation of 7° 50′ to the N. E. The side immediate to the lot of Barela and the vacant lot is perpendicular to the aforesaid — and that which looks toward the Govern-

25 ment house forms an obtuse angle of 92° 27′ 15″ with the first, as is more clearly shown by the plan that precedes and

on which is figured the lot, with a notation of the dimensions of its sides in lineal feet of London (a common measure of this place), and is represented the actual fences and other boundaries, natural and artificial; and so that it may appear I issue these presents in the city of Pensacola the 19th day of January, 1807.

VICENTE SEBASTIAN PINTADO.

It is a copy of the plat and report of the original survey which is annexed to the proceedings in the case, and is given to be united to the title in form, which is ordered to be issued by the decree above recited, and it remains recorded in book VII, folio 19, No. 1796.

Pensacola, date at *supra*.

(Signed) VICENTE SEBASTIAN PINTADO.

Mr. John Ventura Morales, provisional intendent and superintendent general, subdelegate, judge of Arribadas, of lands and vacant lots in this province of West Florida.

Whereas by the presbyter, Mr. James Colman, curate of this place, vicar and ecclesiastical judge of the province, was solicited — the repairs of the house he lived in, as being in a ruinous condition to be occupied, and it was determined, at a meeting of the royal exchequer held on the 11th October of the year last past, of which the commanding engineer, by notice of the 18th of said month, was informed, and as by his answer of the 20th he openly opposes himself thereto, and proposed that a private house be rented
26 for the lodging of the curate vicar, notice thereof was given him under date of the 29th, for the purpose of his procuring himself with suitable lodging, and by his answer of the 31st of said month he having stated how difficult it would be to find a commodious house and one near to the church, except at a very high rent, and that, owing to the position in which he was, and as a last necessity, that he proposed to buy on his own account the said house so as to rebuild it at his own costs, provided that it was sold to him at its just value. The said proposition being considered at meeting of the royal exchequer held on 22d of November following, the sale of the said house to the presbyter, Mr. James Coleman, was deemed best, the value being estimated by appraisers, and that they thought more advantageous the allowance of fifteen dollars monthly by the royal exchequer as the most reduced rent that could be allowed, owing to the high prices that were asked. Authentic certified copies from the officers that acted thereon and from the tribunal having been made as was ordered, proceedings were instituted, in which, by decree of 2d Dec'r, was ordered to be added thereto certified copy of the official report of the commanding engineer, in which he sums up the cost of the repairs of said house, and it was ordered to proceed judicially to the valuation of the house and lot on which it is located by the master carpenter and brick mason, Francis Lamora and Miguel Luce, and the king's blacksmith, Diego Palmer,
27 for the work of their trades, and by the surveyor general, D. Vicente Sebastian Pintado, for only the lot, and it resulting that the valuation placed by the four referred appraisers amounted

at four hundred and six dollars in hard cash, of which notice was given to the ministerial officers of the royal exchequer, and he conforming thereto, and asking the issue of title after payment in royal chest of the said sum, and by decree of 11th of the same month the curate vicar was informed thereof, and by his answer agreed thereto, and thereafter by judgment of the assessor, I issued a decree on the 12th of the same month, which is as follows:

"Proceedings seen, what is represented by the ministerial officer of the royal exchequer and alleged by the ecclesiastic vicar of this province, the presbyter, James Coleman, is approved, the valuation of the house which he occupies as curate of this parish, and, after the payment of the amount in the royal chest in certificates of credits thereof, which will be received for the reasons that are alleged, let the proper title issue, taking effect from the time when he makes such payment, the allowance of fifteen dollars rent assigned by the meeting of the royal exchequer."

The payment of the four hundred and six dollars at which was valued the house and lot on 15th of the said month of Dec'r for the curate vicar having been made, as appears by the certificate of the minister treasurer appended to said proceedings, he applied,
with the said vicar, asking that the surveyor general, Vicente
28 Sebastian Pintado should lay off the said lot, extending its dimensions the same as that of other lots that front the beach, and by decree of the 20th of the aforesaid month of December it was ordered that the surveyor general should report the extension of the lot according to the plan of the city, and he accordingly did so, representing that said lot did not admit of the interposition of another lot between the actual fences and the margin of the water, and that it should have on that side the extension that the locality permits. The proceedings then, by decree of the 23rd, going through the attorney general, he, under date of the 24th, represented that he agreed that the limits should be up to the beach, leaving a free passage at high-water mark, and by decree of the 15th of the present month, and agreeing with the assessor, I thought proper, in conformity with the report of the surveyor general of the province, and what was informed by the ministerial officer of the royal exchequer, to order that the depth of the lot in question ought to extend to the margin of the water, leaving a sufficient space to pass at high tide, with the condition that while the actual pen to keep the king's timber exists, and it be desired to make use of the portion of the lot that is outside the enclosures for any purposes of the service, that no alteration is to be made of the actual state of things, so that the passage may remain free, the title to the property remaining, however, declared to be in the curate vicar, and I order that the title should issue after
the making of the plan that must accompany it, and one re-
29 maining, with the proceedings that appertain to it, with the following explanation, which says: That on the northern side it binds with the fence of the quarters and a portion of the square of arms, with an extension of 145 lineal feet of London; on the south with the margin of the water of the Bay of Pensacola at high tide, a passage being left free; on the east with the lot granted to

Joaquin Barela and vacant lot, and on the west with the reserve street between the court fence and Government garden and the most western limit of the lot of the interested party parallel with said fence, which street is 42½ English feet wide.

Therefore, in the exercise of the authority which the King, our Lord, whom God may preserve, has conferred upon me, and in his royal name, I grant unto the aforesaid James Coleman, curate of this place, vicar and ecclesiastical judge of this Province, the aforesaid lot under the boundaries and dimensions aforesaid, and which appear from the above-cited plan, so that as his own he may possess, enjoy, sell, or alienate it at his own will, he having purchased it from the royal exchequer. In consequence of which I declare in him full and direct domain, and I grant him power to take possession, and do put him in possession thereof, and protect him therein without prejudice to a third party that may have a better right thereto, upon condition that he must observe and comply with what is ordered in the instructions issued and published by the administration general of the retroceded Province of Louisiana on the 17 of July, 1799, and that he will remain subject to the rules of police and municipal ordinances in that touching good order.

In faith whereof I have ordered these presents to issue, signed with my hand, sealed with the seal of my coat-of-arms, and countersigned by the undersigned secretary *ad interim* of this administration general, in whose office, as also in that of the minister of the royal exchequer, it will remain registered, and account thereof will be taken.

Done at Pensacola on twentieth of January, eighteen hundred and seven.

(Signed) JOHN VENTURA MORALES.
(Signed) FRAN'CO GUTIERRER DE ARROYO.

The foregoing title remains registered in the book destined for that purpose, in the office, temporarily in my charge, at pages 127, 128, and 129, to which I refer.

Pensacola, twenty-second of January, eighteen hundred and seven.

(Signed) FRAN'CO GUTIERRER DE ARROYO.

In the principal auditor's office of this province an account was taken of the foregoing title, at pages 81, bta., 82, and 83, in the book destined for that purpose.

Pensacola, twenty-third of January, eighteen hundred and seven.

(Signed) JOHN FRANCIS ARNOULD DE COURVILLE.

STATE OF FLORIDA, *Escambia County:*

I, F. E. de la Rua, keeper of the Spanish archives of West Florida, do hereby certify that the foregoing eight pages contain a correct translation of — made by me of and from the Spanish grant to James Colman, in the Spanish language, now remaining in the records of the said archives in my office.

Given under my hand and private seal, my seal official being lost or misplaced, this 27th day of August, A. D. 1874.

(Signed) F. E. DE LA RUA, [SEAL.]
Keeper Spanish Archives of West Florida.

Public Archives of West Florida.

First Vol. Record of proceedings before U. S. Land Commissioner.
Page 12.

WEDNESDAY, *July 17th*, 1882.

"Santiago Colman presented his claim to lots No. 561, 288, and also to a lot fronting the bay, in the city of Pensacola, & to 1,600 arpents of land."

Page 198.

"MONDAY, *5th January*, 1824.

32 "The claim of Santiago Coleman to a lot fronting the bay, bounded on the north by the old barracks and part the square, east by the lot granted to Joaquin Barrela, and west by the street passing by the Government lot, containing 145 English feet front by 201 in depth, was then taken up for examination, and the following title papers and testimony exhibited in support thereof, to wit:

"A copy of a plat and certificate of survey, executed and returned by V. S Pintado, surveyor general, on the 19th January, 1807, certified to be a true copy of the said Pintado on the same day and year; also an original grant or title made to Santiago Colman by the Intendent Morales, countersigned by Arroyo, secretary, on the 20th January, 1807."

The grant recites: "That the lot and improvements thereon were regularly appraised and sold to the present claimant for the sum of $406, which he paid into the treasury.

"Joseph E. Caro proved the signatures of Morales, Arroyo, and Pintado."

Second vol. of said records, pages 218 & 219:

Abstract "F." "An abstract of claims to lots in Pensacola, founded upon sales at auction by the Spanish government, and which have been confirmed by the undersigned commissioner."

No. "39." "Santiago Coleman, claimant." "Santiago Coleman, original vendee." Nature of claim, "sale." "Date of claim, 20 January, 1807."

33 No. of lot "—." "Dimensions of lot, 145 feet front by 201 deep." By whom sold, "Intendant Morales." When surveyed, "19th January, 1807" By whom surveyed, "Vicente S. Pintado."

STATE OF FLORIDA, *Escambia County:*

I, F. E. de la Rua, keeper of the public archives of West Florida, certify that the foregoing are true and correct extracts from said archives in the matter of claim and confirmation to Santiago Coleman of a lot of land fronting the bay, and as the same remains of

record in my office, and are taken from the books and pages given above.

Witness my hand and private seal, my seal of office being lost or misplaced, this 4th March, A. D. 1880.

(Signed) F. E. DE LA RUA, [SEAL.]
Keeper Public Archives of West Florida.

Endorsement: Extracts — public archives of West Florida touching lot fronting the Bay of Pensacola, confirmed to S. Coleman.

Appointment of Administrator for Estate of James Coleman.

STATE OF FLORIDA, *Escambia County:*

To all whom these presents shall come, Greeting:

34 Whereas John Quinlan, of the county and State aforesaid, hath been duly qualified according to law to act as administrator of the estate of James Coleman (with the will annexed), deceased, late of the county and State aforesaid, and hath entered into bonds jointly with Dillon Jordan and C. L. Le Barron, payable to the Governor of the State of Florida and his successors in office, in the penal sum of one thousand dollars, lawful money of the United States, conditioned for the faithful discharge of his duties as such:

Now know ye that administration is hereby granted to the said John Quinlan in all and singular the goods and chattels, rights and credits of said estate.

Witness the Honorable C. N. Jordan, judge of the court of probate for the county and State aforesaid, this the 28th day of July, A. D. 1866.

(Signed) C. N. JORDAN,
Judge of Probates, E. C.

STATE OF FLORIDA, *Escambia County:*

I, C. N. Jordan, judge of probate court in and for the county and State aforesaid, and *ex-officio* clerk of the same, do hereby certify the foregoing to be a true and correct copy of the original letters of administration granted to John Quinlan on the estate of Jame Coleman, deceased, late of the county and State aforesaid, as the same is of record in my office.

35 Given under my hand and seal of office, at Pensacola, this the 28th day of July, A. D. 1866.

[SEAL.] (Signed) C. N. JORDAN,
Probate Judge and ex-officio Clerk of said County.

[Int. Rev. stamp.]

Endorsement: Copy — letters administration to John Quinlan on the estate of James Coleman, deceased. Recorded in Book A, page 47. Filed March 4, '80. (Signed) Geo. E. Wentworth, clerk.

Certified Copy — Order of Sale.

STATE OF FLORIDA, *Escambia County:*

In the matter of petition of John Quinlan as administrator, with

will annexed, of estate of James Coleman, deceased, for authority to sell real estate. This case coming on to be heard upon the petition filed herein, and it appearing to the court that due notice has been given as required by law, and the prayer of said petition appearing to the court to be reasonable and just, it is hereby ordered, adjudged, and decreed that the said petitioner, John Quinlan, as administrator as aforesaid, be, and he is hereby, authorized to sell the real estate described in the said petition, to wit: Lot "F," the north
36 half of lot fifty-six (56), and the east half of lot two hundred and eighty-eight (288).

It is further ordered that the said property be sold at public outcry, for cash, in gold, to the highest bidder, after giving thirty days' notice of the time and place of sale by publication in the Pensacola Observer.

It is further ordered that the said petitioner, as administrator as aforesaid, be authorized to execute conveyance for the said real estate to the purchasers at their costs.

Given under my hand and official seal, at Pensacola, this 22d day of April, 1867.

[SEAL.] (Signed) C. N. JORDAN,
Judge of Probate, E. C.

STATE OF FLORIDA, *Escambia County:*

I, O. M. Avery, county judge of said county, hereby certify that the foregoing is a correct transcript of the order for sale of the property within mentioned as the same appears on file and of record in the office of county judge as judge of probate of aforesaid county.

Witness my hand and seal official this 4th day of March, A. D. 1880.

[SEAL.] (Signed) O. M. AVERY,
County Judge and Judge of Probate.

37 Endorsement: James Coleman's estate. Order of sale. Certified copy. Filed March 4, 1880. (Signed) Geo. E. Wentworth, clerk.

Deed.

Know all men by these presents that whereas John Quinlan, as administrator, with the will annexed, of the estate of James Coleman, deceased, did, on the 22d day of April, A. D. 1867, after giving the notice required by law, file his petition in the probate court for the county of Escambia, in the State of Florida, praying for a decree of said court authorizing him to sell that lot of ground known in the plan of the city of Pensacola as lot "F," of which the said James Coleman died seized; and whereas on the 22d day of April, A. D. 1867, the said court rendered its decree authorizing the said John Quinlan, as administrator as aforesaid, to sell the above-described real estate, at public outcry, to the highest bidder, for cash, after giving thirty days' notice of the time and place of sale by publication in the Pensacola Observer; and whereas thirty days' notice was given by publication in the Pensacola Observer that the above-

described real estate would be sold before the court house-door, in the city of Pensacola, on the 27th day of May, A. D. 1867, upon the terms and in the manner prescribed by said decree; and
38 whereas on the said 27th day of May, 1867, John Quinlan, administrator as aforesaid, did offer the said lot "F" for sale at public outcry, before the court-house door in the said city of Pensacola, upon the terms mentioned in said decree and notice, and Richard M. Bushnell did bid the sum of five thousand five hundred and twenty-five dollars for said lot "F," which, being the best and highest bid, the said Richard M. Bushnell became the purchaser of the said lot "F."

Now, therefore, I, John Quinlin, administrator, with the will annexed, of the estate of James Coleman, deceased, by virtue of the authority in me vested as aforesaid, for and in consideration of the premises, as well as of the sum of five thousand five hundred and twenty-five dollars in gold to me in hand paid by the said Richard M. Bushnell, the receipt of which is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell and convey, unto the said Richard M. Bushnell, his heirs and assigns, the said lot of ground situated in the city of Pensacola, county and State aforesaid, and known on the plan of said city as lot "F," together with the improvements thereon and the rights and privileges thereto pertaining:

To have and to hold the said lot "F," with all the improvements, rights, privileges, and appurtenances thereto belonging, unto said Richard M. Bushnell, his heirs and assigns, forever.

In testimony whereof I have hereunto set my hand and affixed my seal this 4th day of December, A. D. 1867.

39 (Signed) JOHN QUINLAN, [SEAL.]
Administrator, with Will Annexed, of Estate of James Coleman, Deceased.

Signed, sealed, and delivered in presence of—
(Signed) GEO. W. HUTTON.
(Signed) CAPT. W. PINNEY.

STATE OF FLORIDA, *Escambia County:*

The execution of the foregoing instrument of writing by John Quinlan, as administrator of James Coleman, deceased, was this day proven before me by the oath of Geo. W. Hutton, one of the subscribing witnesses to the execution of the same by the said John Quinlan, and for the uses and purposes therein expressed.

Witness my hand and seal official this 12th day of July, A. D. 1869.

[OFFICIAL SEAL.] (Signed) R. A. STEARNS,
Clerk of the County Court, Escambia County.

Endorsement: John Quinlan, as adm'r of James Coleman, deceased, to Richard M. Bushnell. Deed. Recorded in BOOK "R," at pages 510, 511, 512, this 12th day of July, 1869. (Signed) R. A. Stearns, clerk circuit court. Filed March 4th, 1880. (Signed) Geo. E. Wentworth, clerk.

40 *Deed.*

Know all men by these presents that we, Richard M. Bushnell and Sarah L. Bushnell, his wife, for and in consideration of the sum of eight thousand dollars to us in hand paid by Ezekiel E. Simpson, Richard L. Campbell, David Perry, and Edward A. Perry, the receipt of which is hereby acknowledged, have bargained and sold, and by these presents do bargain and sell and convey, unto the said E. E. Simpson, R. L. Campbell, D. Perry, and E. A. Perry the following-described real estate, situated and lying in the city of Pensacola, in the county of Escambia and State of Florida, to wit:

That lot of ground known and designated on the plan of the said city of Pensacola as lot "F," being the same which was granted by the Spanish government to Rev. James Coleman on the 20th of January, 1807, and by the R't Rev. John Quinlan, as administrator of the estate of the said James Coleman, conveyed to the said Richard M. Bushnell on the 4th day of December, 1867, to which said grant and plat annexed thereto and said deed of conveyance reference is hereby made for a fuller description of the said real estate hereby conveyed, together with all the rights and appurtenances thereunto belonging:

To have and to hold the same unto the said Ezekiel E. Simpson, Richard L. Campbell, David Perry, and Edward A. Perry, share and share alike, and unto their heirs and assigns, forever.

In testimony whereof we have hereunto set our hands and
41 affixed our seals this 4th day of December, A. D. 1868.

(Signed) R. M. BUSHNELL. [SEAL.]
(Signed) SARAH L. BUSHNELL. [SEAL.]

Signed, sealed, and delivered in presence of—
(Signed) EMMA OVERMAN.
(Signed) M. P. DE RIOBOO.

STATE OF FLORIDA, *Escambia County:*

I, Sarah L. Bushnell, wife of the said Richard M. Bushnell, do hereby declare that I joined with my said husband in executing the foregoing deed for the object and purpose of relinquishing my right of dower in the premises embraced in the above deed, and I hereby further declare that I joined with my said husband in the execution of the above deed freely and voluntarily and without any fear, compulsion, or apprehension of or from my said husband.

Given under my hand and seal this 4th day of December, A. D. 1868, separately and apart from my said husband.

(Signed) SARAH L. BUSHNELL. [SEAL.]

STATE OF FLORIDA, *Escambia County:*

I, M. P. de Rioboo, an acting justice of the peace in and for said county, do hereby certify that the foregoing relinquishment of dower and declaration was made before me and in my pres-
42 ence by the said Sarah L. Bushnell, wife of the said Richard M. Bushnell, in the said county and State, within the limits

of my jurisdiction, and separately and apart from her husband, the said Richard M. Bushnell.

In testimony whereof I have hereunto set my hand and affixed my seal this 4th day of December, A. D. 1868.

(Signed) M. P. DE RIOBOO, [SEAL.]
Justice of the Peace.

STATE OF FLORIDA, *Escambia County:*

I, Richard M. Bushnell, do hereby acknowledge that I executed and delivered the above deed for the uses and purposes therein expressed.

(Signed) R. M. BUSHNELL.

Acknowledged before me this 4th day of Dec., 1868.

(Signed) M. P. DE RIOBOO, [SEAL.]
Justice of the Peace.

Endorsement: R. M. Bushnell to E. E. Simpson, R. L. Campbell, E. A. Perry, and D. Perry. Deed to lot "F." Recorded in Book "R," at pages 512–513, this July 13, 1869. R. A. Stearns, cl'k c't court. Filed March 4th, 1880. (Signed) Geo. E. Wentworth, clerk.

43 *Memorandum.*

The P. & L. R. Road Company will pay to owners of Coleman lot five dollars per month from May 1st, 1871, as rent for the blacksmith shop on the said lot for such time as said company shall occupy the said shop under this lease.

The owners of Coleman lot hereby lease to the P. & L. R. R. Co. the said shop for a term to be determined at the will of either party, after thirty (30) days' notice. Until notice to the contrary is given in writing, the P. & L. R. R. Co. may continue to use the vacant portions of said lot, as now used, without charge.

April 28, 1871.

(Signed) E. A. PERRY,
For Owners of Coleman Lot,

(Signed) ALBERT HYER,
For P. & L. R. R. Co.

"Copy."

PENSACOLA, *Dec.* 16, 1869.

Messrs. Campbell & Perry, Pensacola:

GENTLEMEN: We are occupying the water front or shallows in front of the Coleman lot as tenants under the lease taken from the owners of said lot last year.

Yours very truly,

44 (Signed) ANDERSON, HYER & CO.

"Copy."

Lease.

STATE OF FLORIDA, *Escambia County:*

This indenture, made the fifth day of January, A. D. 1869, between Richard L. Campbell, E. A. Perry, E. E. Simpson, and David Perry, of the one part, and Wm. E. Anderson, of the second part, witnesseth: That the party of the first part, for and in consideration of the sum of one dollar to them in hand paid, the receipt of which is hereby acknowledged, have let, and by these presents do grant, demise, and let, unto the party of the second part, all that bay or water front in the city of Pensacola, Florida, which is in front of lot "F," lying between the railroad wharf — Commendancia street, retaining and reserving unto the party of the first part all right and interest in and to the bath-house now on said leased premises. It is understood, however, that this lease is to determine at the option of the lessors, after giving the lessee thirty days' notice.

In testimony of all of which we have hereto set our hands and seals.

(S'g'd)	RICHARD L. CAMPBELL.	[SEAL.]
(S'g'd)	E. A. PERRY.	[SEAL.]
(S'g'd)	D. PERRY.	[SEAL.]
(S'g'd)	E. E. SIMPSON.	[SEAL.]
(S'g'd)	W. E. ANDERSON.	[SEAL.]

Signed, sealed, and delivered in the presence of—
(S'g'd) E. W. JONES.
(S'g'd) H. T. WRIGHT.

"Copy."

45 STATE OF FLORIDA, *Escambia County:*

The execution of the foregoing lease was this day proven before me by H. T. Wright, one of the subscribing witnesses to the same, who acknowledged that he witnessed the execution of the said lease, and for the uses and purposes therein expressed.

Given under my hand this 18th Feb'y, 1869.

(Signed) R. A. STEARNS,
Cl'k C't Court.

Copy.

STATE OF FLORIDA, *Escambia County:*

I, F. E. de la Rua, clerk of the circuit court in and for the county and State aforesaid, hereby certify that the foregoing is a true and correct copy of a lease between the parties therein named, as the same remains of record (of date of record Feb. 18th, 1869) in my office, in Book "R," at pages 345 to 346.

In witness whereof — my hand and seal official this 3rd March, A. D. 1880.

[OFFICIAL SEAL.] (Signed) F. E. DE LA RUA,
Cl'k C't Court.

Endorsement: Campbell, Perry, *et al.*, to W. E. Anderson. Copy of —. Certified copy of lease for water front in front of lot "F." Book "R," pages 345, 346.

46 This indenture, executed the 20th day of October, A. D. 1881, by and between David Perry, of Oakland, California, now in the city of Pensacola, party of the first part, and the Pensacola Ice Co., of the city of Pensacola, of the second part, witnesseth:

1st. That the said party of the first part, in consideration of the covenants and rents hereinafter mentioned, has leased to the party of the second part for the term of ten years from and after the 20th day of October, A. D. 1881, the following-described portion of the water front of the Coleman lot, in the city of Pensacola, county of Escambia and State of Florida, to wit, the north line of said leased premises commences at a point on the east side of Commendancia wharf, 1238 feet south of the northern end of said Coleman lot, and 25 feet south of a building called the boiler-shop, and runs east forty feet; thence the eastern boundary line runs to the channel of the Bay of Pensacola; the west line of said leased premises to be the east line of said Commendancia wharf and its extension to the channel of said Bay of Pensacola; and the said party of the first part hereby agrees and covenants that during the continuance of this lease neither he nor any other party interested in the said Coleman lot shall shut out or give to any one else authority to shut out boats and vessels from access to the said leased premises; and also said party of the first part agrees and covenants that during the
47 continuance of this lease the party of the second party shall have the right to construct and use a railway track across the water front of said Coleman lot at or near the beach to connect the Pensacola railroad with Commendancia wharf.

2nd. That the party of the second part agrees and covenants to pay as rent for said leased premises all taxes upon the same and upon the improvements thereon, and to the party of the first part, his heirs and assigns, three hundred dollars per year, to be paid semi-annually—that is to say, one hundred and fifty dollars to be paid every 20th of April and 20th October during the said time. In default of any payment, when due, the party of the first part, his heirs or assigns, may, at his or their election, at once determine this lease and re-enter into possession of the leased premises.

3rd. The party of the second part, faithfully fulfilling its agreements and covenants, and promptly making payments of rents when due, shall have the privilege of re-renting the said premises at the expiration of this term for a new term of ten years upon such terms as may be mutually agreed upon by the parties of the second part and the party of the first part, his heirs or assigns; and in case of non-agreement upon such terms as may be fixed by two disinterested freeholders, to be selected one by each party, which two, if they cannot agree, may call in a third, who may fix the terms, provided the party of the second part makes known to party of the first
48 part, his heirs or assigns, in writing, six months prior to the end of this term, its purpose to avail itself of this privilege.

In testimony whereof the parties hereto have set their hands and seals.

(Signed) DAVID PERRY. [SEAL.]

[Corporation Seal of Pensacola Ice Company.]

PENSACOLA ICE COMPANY.

(Signed) By SEWALL C. COBB, *President.*

Signed, sealed in duplicate, and delivered one to each party in our presence—

(Signed) WM. FISHER.
(Signed) JOHN A. MERRITT.

"Copy."

STATE OF FLORIDA, *Escambia County:*

Before me, Wm. Fisher, a notary public in and for said State, personally appeared David Perry and Sewall C. Cobb, president of Pensacola Ice Company, to me well known to be the individuals who executed the above and foregoing indenture, and acknowledged each for himself that they executed the said indenture for the uses and purposes therein expressed.

In testimony whereof I have hereunto set my hand and official seal this 20th day of October, A. D. 1881.

49 [NOTARIAL SEAL.] (Signed) WM. FISHER,
Notary Public.

And thereupon the plaintiff offered himself as a witness in his own behalf, and, having been duly sworn to testify, testified that at the time he purchased the property mentioned in the foregoing deed he was induced to do so by the representations of R. L. Campbell that said real estate extended to the channel of the bay, which testimony was objected to by the defendant, but admitted by the court, and to which ruling of the court the defendant excepted. Said witness testified that at the time he purchased said property there was a blacksmith shop on the beach, for which rent was paid to him. And said plaintiff further testified that upon this said purchase he went into and had since held possession as riparian owner, except where such possession had been interrupted by a taking of possession of part of water front by George Wells and others, against whom he obtained judgments in this court, and was put back into possession. Thereupon plaintiff offered in evidence the said judgments referred to in plaintiff's testimony, which was read in evidence to the jury; but before said judgments were read in evidence the reading thereof was objected to by defendant, which objection was overruled
50 by the court, and the defendant then and there excepted to said ruling.

C. L. LEBARON was then offered as a witness in behalf of the plaintiff, who, having been duly sworn, testified that he had, by permission of the owners of the Coleman lot, in or about the year 1868, built a bath-house in the bay in front of the Coleman lot, said both-house being about 40 feet square; that he built two, one in 4

and the other 5 feet water, and maintained it for several years; that at that time there was a wharf at the foot of Commendancia street, on the remnant of a wharf which had been built in 1858. He also proved the following writings, which was read to the jury:

PENSACOLA, *June* 17, 1871.

Mr. C. L. LeBaron.

DEAR SIR: You have a bath-house situated near the R. R. depot. Presuming that when this was placed there you were ignorant of the ownership of the property upon which it is built, I consider it a duty to you to inform you that it is mine. If you wish to continue this building it must be by my permission; otherwise I must take proper measures to have the house removed from the premises.

Respectfully yours, &c.,

(Signed) GEO. S. WELLS.

"Copy."

PENSACOLA, *June* 18, 1871.

Mr. Geo. S. Wells.

51 DEAR SIR: Your note — 17th instant, in reference to the bath-house on the Coleman —, received. The bath-house was put there by me by authority of Mr. E. E. Simpson and others, who represent themselves as owners of the lot, and I will not remove the same unless they request it, and cannot take any further notice of your note.

Yours, &c.,

(Signed) C. L. LEBARON.

Endorsement: Filed March 12, 1880. (Signed) Geo. E. Wentworth, clerk.

ALBERT HYER, another witness in behalf of the plaintiff, having been duly sworn, testified that he and his firm had leased from the owners of the Coleman lot the water in front thereof for the purpose of booming timber, and that the space covered by said lease had been used by witness and his firm ever since for boomage; that the space they used lies between the railroad wharf on the east and Commendancia street wharf on the west.

W. H. DAVIDSON, another witness on behalf of the plaintiff, having been duly sworn, testified that he is the city surveyor; that he made a survey to show the water front of the Coleman grant, if the east and west lines thereof were continued without deflection into the bay; that the map or plat hereto annexed, marked "A,"

(Here follows diagram marked p. 52.)

54 shows what space would be embraced by such extension of said lines into the bay, and that said lines on said map are extended over the wharf at the foot of Commendancia street, as *known* in the plan of the city of Pensacola; that said extension of the lines of said grant would embrace the property embraced in this action, but that to embrace it said lines must be extended over

and beyond said Commendancia street wharf, or any extension of Commendancia street into the bay, as represented on diagram "B,"

(Here follows diagram marked p. 53.)

but not over and beyond the extension of the 42½-feet street described in Coleman grant as lying between that grant and Governor's Garden. That street extended would be entirely west of extended west line of Coleman lot, as represented on diagram—that is to say, the extended west line of Coleman lot is the extended east line of the 42½-feet street; that the east and west lines of lot "F," as known in the Spanish or Cabildo plan of Pensacola, if extended into the bay, would not embrace the property in this suit, and the western line would run along the dotted line represented on the western margin of the diagram and running parallel with delineations of Commendancia street wharf thereon; that the diagram represents the extension of the lines of the Coleman grant and not of the line of lot F, as known on the Spanish plan of the city. The diagram marked "B" having been shown to the witness, he testified:

54½ "I recognize lot 'F' in said diagram as the Coleman lot, but I do not recognize the figures and distances in the plan of said city of Pensacola. The said plaintiff then offered in evidence volume 4 of American State Papers, and thereupon rested his case. And thereupon the defendant offered in evidence and submitted to the jury — pages of vol. 4 of American State papers, and he further offered in evidence and submitted to the jury the following map and accompanying certificate.

55 *Copy of Certificate.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *April 21st*, 1879.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed copy of the original plan of Pensacola, Florida, is a true and literal exemplification of the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal United States General Land Office.]

(Signed) J. A. WILLIAMSON,
Commissioner of General Land Office.

Copied August 4th, 1883, by W. H. Davison, civil engineer and surveyor of the city of Pensacola.

(Here follows diagram marked p. 56.)

57 And the said parties having concluded and submitted their testimony as aforesaid the said judge did then and there deliver his charge to the jury as follows, to wit:

That the plaintiff had shown a good paper title as riparian owner

of the submerged land lying in front of the Coleman grant, and that under the statute law of Florida the plaintiff was authorized to continue and prolong the eastern and western lines to the channel of the bay; and if the jury were satisfied from the evidence that the continuation of said eastern and western lines of said grant to the channel of the bay would embrace the property in this suit they must find for the plaintiff.

And thereupon the said defendant, by his attorney, did ask said judge to instruct the jury as follows:

1. The plaintiff in this case must recover upon the strength of his own title without regard to the title of any other person.

2. That if, upon inspection of the order of the probate court of Escambia county authorizing the administrator of James Coleman's estate to sell lot "F," according to the Spanish plan of the city of Pensacola, —, no land outside of the lines of said lot "F," as known in said plan of said city, could be conveyed by said administrator under said order of sale.

58 3. That if you are satisfied from the evidence that the said lot, known in the Spanish plan of the city of Pensacola as lot "F," did not extend to the ordinary high-tide mark, then the plaintiff cannot claim riparian rights under the deed conveying said lot "F" to the party under whom plaintiff claims, and that the lines of said lot cannot, under the laws of the State of Florida, be extended beyond their location upon the map of the city of Pensacola.

4. That if the jury are satisfied from the evidence that the extension of the eastern and western lines of lot "F," as known in the plan of the city of Pensacola, would not embrace the property for which the plaintiff sues, then they must find for the defendant.

5. That the points from which the lines of riparian owners must extend out into rivers and harbors are those points at which those lines strike the margin of such rivers and harbors and at right angles with the shore; and therefore if the jury are satisfied from the evidence that the east and west lines of the lot claimed by the plaintiff if extended at right angles with the shore would not embrace the property claimed by the plaintiff in this suit, then they must find for the defendant.

5a. If the jury are satisfied from the evidence that the property claimed by the plaintiff in this suit lies west of Commendancia street, as known in the plan of the city of Pensacola, or west

59 of the extension of said street out into the bay, and that the said property cannot be included within the east or west lines of the Coleman lot extended into the bay without crossing said Commendancia street or its extension into the bay, then the jury must find for the defendant.

6. If the jury are satisfied from the evidence that there existed a street, public ground, or common, according to plan of the city of Pensacola existing at the time of the grant to James Coleman, then there can be no lawful extension of the lines of said grant into the water, so as to interfere with the extension of the lines of such street, public ground, or common into the bay, and therefore if the extension of the lines of the Coleman grant cannot embrace the

property claimed by the plaintiff in this case without crossing or in any wise interfering with such street, public ground, continued into the bay, then the jury must find for the defendant.

7. That if the jury are satisfied from the evidence that there is no Spanish plan of the city of Pensacola, and that which is known as the Spanish plan of said city was never adopted by lawful authority as such plan, then they must conclude from the evidence before them there is no other lawful plan of the city of Pensacola except the English plan; and if they are further satisfied from the evidence that the property in this suit is embraced within the exten-
60 sion of the public square into the bay, then the jury must find for the defendant.

8. That if the jury are satisfied from an inspection of the deed executed under the order of the probate court that it only purported to convey a lot, "F," according to the Spanish plan of the city of Pensacola, then reference to said plan is indispensable to the ascertainment of said lot, and if the plaintiff has failed to show the location and metes and bounds of said lot according to said Spanish plan, then the jury must find for the defendant.

9. That as the deed under which the plaintiff claims the property in question in this suit refers to a lot known in the Spanish plan of the city of Pensacola as lot "F," it is incumbent upon the plaintiff to show, by the production of that plan, a copy or evidence thereof so satisfactory at least as to enable the jury to determine whether the property claimed by the plaintiff in this suit is embraced within said lot "F" or an extension of its eastern and western lines into the bay.

10. That a party who takes under a deed which describes a lot or parcel of land as a lot known in a certain — of a city or town, takes under such map, and cannot be permitted to dispute the validity of that title. If, therefore, the jury in this case find that the plaintiff in this case claims under a deed which described the lot in respect to which he claims the property mentioned in the
61 declaration, he cannot be permitted to deny the validity of that plan or assert any right inconsistent with said plan.

All which instructions said judge refused to give except the first and 9th, and thereupon the plaintiff excepted to the said charge of the said judge and his refusal to give said instructions, which were asked for in writing.

And the said judge, under his charge, submitted the issue and the aforesaid evidence to the jury, and the said jury thereupon gave their verdict for the said plaintiff. Upon which said verdict final judgment was rendered against the defendant.

And now, on this 16th day of March, A. D. 1883, during said term of said court, the said plaintiff did propose and submit to said judge this their bill of exceptance and request him to sign and seal the same, which is done on said last-mentioned day.

(Signed) THOMAS SETTLE, [SEAL.]
Judge.

62 And on the 19th day of March, A. D. 1883, came the defendant-, by their attorney, Richard L. Campbell, Esq., and filed their prayer for a writ of error in the words and figures following, to wit:

Prayer for Writ of Error.

UNITED STATES OF AMERICA, *Northern District of Florida:*

To the honorable justices of the Supreme Court of the United States:

And now comes the Pensacola Ice Company, a corporation existing under the laws of the State of Florida, by R. L. Campbell, its attorney, and complains that in the record and proceedings, and also in the rendition of judgment in a suit between David S. Perry, a citizen of the State of California, plaintiff, and said Pensacola Ice Company, defendant, tried in the circuit court of the United States for said district at the March term thereof, A. D. 1883, at Pensacola, and in which judgment was rendered against said defendant on the 13th day of March, A. D. 1883, manifest error hath occurred and intervened to the great damage of said defendant:

Wherefore he prays for the allowance of a writ of error and such other process as may cause the same to be corrected by the Supreme Court aforesaid.

March 19th, A. D. 1883.

(Signed) RICHD L. CAMPBELL.
Attorney for Defendant.

Endorsement: Filed March 19th, A. D. 1883. (Signed) W. W. Wharton, clerk.

63 And on the said 19th day of March, A. D. 1883, came the defendant- in this cause, by their attorneys, Richard L. Campbell and W. A. Blount, Esquires, and filed their writ of error, in the words and figures following, to wit:

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the northern district of Florida, Greeting:

Because that in the records and process and also in the rendering of judgment in a suit before you, or some of you, between the Pensacola Ice Company, a corporation existing under the laws of the State of Florida, plaintiff in error, and David S. Perry, a citizen of the State of California, defendant, a manifest error has intervened, to the great damage of the said plaintiff in error, as in his complaint has been stated, and it is just and proper that the error, if any there *are*, should be corrected in due manner; and that full and speedy

justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and the associate justices of the Supreme Court of the United States,
64 on the second Monday of October next, at Washington, being the present seat of the National Government, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court, at Washington aforesaid, this 19th day of March, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independance of the United States the one hundred and eighth.

[L. S.] (Signed) W. W. WHARTON,
Clerk Circuit Court, Fifth Judicial Circuit,
Northern District of Florida.

I, William Wilson Wharton, clerk of the circuit court of the United States in and for the northern district of Florida, at Pensacola, Florida, do hereby certify that the above and foregoing is a true and correct copy of the writ of error on file in my office, in the cause of David S. Perry *versus* the Pensacola Ice Company.

In witness whereof I hereunto sign my name officially, and affix the seal of said court, at Pensacola, Florida, this 19th day of March, A. D. 1883, and of the Independence of the United States the one hundred and seventh.

[SEAL.] (Signed) W. W. WHARTON, *Clerk.*
By JAMES R. ROCHE,
Deputy Clerk.

65 Endorsement: Copy of writ of error for use of defendants on appeal. Filed March 19th, A. D. 1883. (Signed) W. W. Wharton, clerk. By James L. Roche, deputy clerk.

And on the 23d day of March, A. D. 1883, came the defendant-in this cause and filed their bond on writ of error in the words and figures following, to wit:

Bond.

Know all men by these presents that we, The Pensacola Ice Company, a corporation existing under the laws of the State of Florida, as principal, and W. W. Richards and W. L. Wittich, of Pensacola, Florida, as sureties, are held and firmly bound unto David S. Perry, who is a citizen of the State of California, in the sum of two thousand dollars, to be paid to the said David S. Perry, his executors or administrators, and for the payment of which, well and truly to be made, we bind ourselves and each of us, jointly and severally, our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and delivered this 19th day of March, A. D. 1883.

Now the condition of the above obligation is such that whereas the above-bound Pensacola Ice Company hath prosecuted a writ of error in the Supreme Court of the United States to reverse
66 the judgment rendered at the March term, A. D. 1883, of the circuit court of the United States for the northern district of Florida, at Pensacola, in an action of ejectment wherein the said David S. Perry is plaintiff and the said Pensacola Ice Company is defendant:

Now, therefore, if the above-bounden Pensacola Ice Company shall prosecute its said writ of error to effect, and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

Attest: (Signed) S. H. SELLARS, [SEAL.]
Sec'y & Treas. of Pensacola Ice Co.
(Signed) W. L. WITTICH. [SEAL.]
(Signed) W. W. RICHARDS. [SEAL.]

Sealed and delivered in the presence of—
(Signed) RICH'D L. CAMPELL.
(Signed) EDMOND LEWIS.

UNITED STATES OF AMERICA, *Northern District of Florida:*

W. W. Richards and W. L. Wittich, who are sureties on the foregoing bond, being duly sworn, say, and each for himself saith, that he is worth the sum of two thousand dollars over and above all his just debts, liabilities, and legal exemptions.

(Signed) W. L. WITTICH.
(Signed) W. W. RICHARDS.

Sworn to and subscribed before me this 19th day of March, A. D. 1883.

[SEAL.] (Signed) W. W. WHARTON,
Clerk U. S. Circuit Court, Nor. Dist. of Fla.

67 I approve of the above bond.
(Signed) THOMAS SETTLE, *Judge.*

March 21st, 1883.

Endorsement: Filed March 23, '83. (Signed) W. W. Wharton, clerk.

I, William Wilson Wharton, clerk of the circuit court of the United States in and for the fifth judicial circuit and northern district of Florida, at Pensacola, Florida, do hereby certify that the writings annexed to this certificate, from page No. 1 to page No. 64, inclusive, are true copies of the originals, and constitute a true and complete record of all the proceedings had in the cause of David Perry *versus* The Pensacola Ice Company, as the same remain on file and of record in my office.

In testimony whereof I have hereunto signed my name officially, and have caused the seal of the said court to be hereunto affixed at the city of Pensacola, in the northern district of Florida, this first day of August, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the one hundred and eighth.

[Seal U. S. Circuit Court, Northern District of Florida, 5th Circuit.]

W. W. WHARTON, *Clerk.*

Endorsed on cover: N. Florida C. C. U. S. No. 354. The Pensacola Ice Company, plaintiff in error, *vs.* David Perry. Filed 8th October, 1883.

(120-318)

FILED
JAN 7 1884

Supreme Court of the United States.

October Term, 1883.

No. 1051.

THE PENSACOLA ICE COMPANY,
PLAINTIFF IN ERROR.

vs:

DAVID PERRY,
DEFENDANT IN ERROR.

MOTION TO DISMISS.

E. A. PERRY,
Attorney for Defendant in Error.

Supreme Court of the United States.

October Term, 1883.

No. 1051.

THE PENSACOLA ICE COMPANY,

Plaintiff in Error.

vs:

DAVID PERRY,

Defendant in Error.

—0—

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

MOTION TO DISMISS.

To the Honorable The Chief Justice and Associate Justices of the Supreme Court of the United States.

The said defendant in error by his attorney who has appeared herein specially for the purpose, respectfully moves your honors to dismiss the writ of error herein, for want of jurisdiction in this Court to re-examine the judgment of the said Circuit Court because the said judgment was rendered after May 1st, 1875, and it does not appear by the record or otherwise that the value of the matter in dispute exceeds five thousand dollars exclusive of costs.

E. A. PERRY.

Attorney for Defendant in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 1051.

THE PENSACOLA ICE COMPANY,

PLAINTIFF IN ERROR,

vs.

DAVID PERRY, DEFENDANT IN ERROR.

In error to the Circuit Court of the United States for the Northern District of Florida,

UPON MOTION TO DISMISS.

—0—

BRIEF TO SUSTAIN MOTION.

This was an action in ejectment brought by the defendant in error, to recover so much of the premises occupied by plaintiff in error as an Ice House &c., in the water front of Pensacola as are situated between Commendencia wharf and the extension of the west line of a lot known as the Coleman Lot, in the city of Pensacola.

Judgment was rendered at the March, Term 1883, of the Circuit Court.

Under the act of Congress of February 16, 1875, that judgment is not re-examinable by this Court unless the matter in dispute exceeds in value five thousand dollars, exclusive of costs. The only thing in the record indicating the value of the premises adjudged to defendant in error, is the allegation in the declaration (Record, Folio, 6--7,) that the property claimed is of value exceeding five hundred dollars and as it does not appear by the record or otherwise that the premises adjudged to the plaintiff in the Court below—the defendant in error here—are of value exceeding five thousand dollars the motion must be granted and the cause dismissed.

E. A. PERRY.

For the Motion.

Supreme Court of the United States.

No. 1051.

THE PENSACOLA ICE CO., *Plaintiff in Error.*

VS.

DAVID PERRY, *Defendant in Error.*

To W. A. BLOUNT, Esq.,
Attorney for Plaintiff in Error.

Please take notice of the motion to dismiss this cause, a copy of which and of the brief to sustain it are hereunto affixed. This motion will be presented to the said Supreme Court of the United States on Monday, the 28th day of January, 1884, at 12 o'clock, m., or as soon thereafter as the same can be heard.

E. A. PERRY.
Attorney for Defendant in Error.

Dec. 29th, 1883.

In Supreme Court of the United States.

PENSACOLA ICE CO., *Plaintiff in Error.*

vs.

DAVID PERRY, *Defendant in Error.*

NORTHERN DISTRICT OF FLORIDA,
Escambia County,
City of Pensacola.

Before me, personally came Chas. B. Parkhill, who being duly sworn says he served the foregoing notice of motion to dismiss the above stated case, upon W. A. Blount Esq., the attorney for the plaintiff in error, by

delivering to him a copy of said notice together with a copy of the said motion and brief on Monday, the 31st day of December, 1883.

Sworn and subscribed before me, this 1st day of January A. D. 1884. } CHAS. B. PARKHILL.

W. W. WHARTON,
Seal. *Clerk U. S. Circuit Court,*
Northern District of Florida.

Supreme Court of the United States.

No. 1051.

THE PENSACOLA ICE COMPANY, *Plaintiff in Error.*

vs.

DAVID PERRY, *Defendant in Error.*

In Error to the Circuit Court of the United States, for the Northern District of Florida.

MOTION TO DISMISS.

October Term, 1883.

TO the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States.

David Perry the said defendant in error, who by his attorney has appeared specially herein for the purpose, respectfully petitions and moves your honors to dismiss this writ of error, for he says that the judgment by said writ of error brought here, is a judgment in ejectment, and that the premises by said judgment adjudged to your petitioner do not exceed in value the sum of five thousand dollars.

That the judgment was rendered long after May 1st, 1875, to-wit, March 13th, A.D. 1883.

That it nowhere in said record appears that the value

of the matter in dispute exceeds five thousand dollars.

That in very fact, the premises which by the suit in the Circuit Court were recovered by the defendant in error from the plaintiff in error and by said judgment adjudged to him, are of value much less than five thousand dollars. That your petitioner is well acquainted with the premises and their value, and that he would be glad to dispose of said premises and all his rights under said judgment against the said Pensacola Ice Co., defendant in the Court below, and plaintiff in error, for much less than five thousand dollars exculsive of the costs, that he will gladly take therefor thirty-five hundred dollars and warrant the title thereto.

And he respectfully submits, that the said writ of error should be dismissed for want of jurisdiction.

Before me, the Clerk of the Circuit Court of the United States for the Northern District of Florida, came the aboved named David Perry, to me well known to be the plaintiff in the ejectment case in said Court, David Perry vs. Pensacola Ice Co., and defendant to the writ of error by which said case has been taken to the Supreme Court of the United States, and he being duly sworn says, the matters in the foregoing petition stated are true.

Sworn and subscribed before me, this 29th day of December A. D. 1883.

DAVID PERRY.

W. W. WHARTON,
Clerk U. S. Circuit Court,
Northern District of Florida.

Seal.

NORTHERN DISTRICT OF FLORIDA,
Escambia County,
City of Pensacola.

Before me, the Clerk of the Circuit Court for said District, personally appeared George Reese, who being duly sworn says, he is Assessor of Taxes of the State of Florida in and for Escambia County. That he is familiar with the premises occupied by the Pensacola Ice Co., on the west side of Commendencia wharf in the water front of Pensacola, and which by the suit in ejectment in the Circuit Court of the United States for the Northern District of Florida, wherein David Perry was plaintiff and the Pensacola Ice Co., was defendant, were adjudged to said David Perry at the March Term, 1883, of said Court. That the duties of his office make it necessary that he should make, and he has made himself familiar with the value of property in the County of Escambia and the City of Pensacola. That the premises so adjudged to said David Perry and occupied by the Pensacola Ice Co., are not of value exceeding three thousand dollars. That the said premises together with the said Company's premises lying west and outside of the western boundary of the premises adjudged to said David Perry, were on the 11th day of July, 1883, listed and valued for taxation, at $1000, as their cash value, by the said Pensacola Ice Co.,

Sworn and subscribed before me, this 29th day of December A. D. 1883. } GEO. REESE.

W. W. WHARTON,

Seal. *Clerk U. S. Circuit Court,*
Northern District of Florida.

NORTHERN DISTRICT OF FLORIDA,
Escambia County,
City of Pensacola.

Before me, Clerk of the Circuit Court for the Northern District of Florida, personally appeared Wm. H. Knowles, who being duly sworn says, he is an Insurance and Real Estate Agent in the City of Pensacola, and as such, is familiar with the value of real estate in said City. That he knows the premises occupied by the Pensacola Ice Co., on the west side of Commendencia wharf for which David Perry recovered judgment in an ejectment suit against said Company at the March Term, 1883, of the Circuit Court of the United States for the Northern District of Florida, and he says, that said premises are not of the value of five thousand dollars.

Sworn and subscribed before me, this 29th day of December A. D. 1883. } WM. H. KNOWLES.

W. W. WHARTON,
Seal. *Clerk U. S. Circuit Court,*
Northern District of Florida.

NORTHERN DISTRICT OF FLORIDA,
Escambia County,
City of Pensacola.

Before me, the Clerk of the Circuit Court for the Northern District of Florida, personally appeared William Fisher an *Attorney at Law* of the City of Pensacola, who being duly sworn says, that he has been professionally engaged in selling and buying and renting Real Estate in the City of Pensacola, and has thus become familiar with the value of most of the real estate

in said City. That he is familiar with the premises recovered by David Perry in his suit against the Pensacola Ice Co., in the Circuit Court of the United States for the Northern District of Florida, at its March, 1883 Term, being a part of the premises now occupied by said Pensacola Ice Co., as an Ice House &c., on the west side of Commendencia wharf. That said premises are not of value exceeding three thousand dollars.

Sworn and subscribed before me, this 29th day of December A. D. 1883. } WM. FISHER.

L. S.

W. W. WHARTON,
Clerk U. S. Circuit Court,
Northern District of Florida.

120-318

Supreme Court of United States.

OCTOBER TERM, 1883.

THE PENSACOLA ICE COMPANY,
Plaintiff in Error,
vs.
DAVID PERRY.
No. 1051.

Brief for Plaintiff in Error, in Opposition to Motion to Dismiss for Want of Jurisdiction.

This is an action in ejectment, brought by the defendant in error to recover the premises mentioned in the declaration. The practice now is to allow affidavits to show the value of the matter in dispute in actions of replevin, ejectment, and suits for dower. (Phillips' Practice, 78; The Mace Girdlen, 6 Wall., 441, and cases there cited.)

The affidavits presented by the plaintiff in error in opposition to the motion clearly prove the value of the property in controversy to be not less than six thousand dollars.

The motion should be denied.

C. W. JONES,
For Plaintiff in Error.

120-818

SUPREME COURT U.S.
JAN 29 1884
A. D. McKINNEY, Clerk.

Supreme Court of the United States

OCTOBER TERM, 1883.

No. 1051.

THE PENSACOLA ICE COMPANY, Plaintiff in Error,

vs.

DAVID PERRY.

Affidavits in Opposition to the Motion to Dismiss for Want of Jurisdiction.

C. W. JONES,
For Plaintiff in Error.

Thomas McGill & Co., Law Printers, Washington, D. C.

In the Supreme Court of the United States.

Pensacola Ice Company, plaintiff in error,
vs.
David Perry, defendant in error,
} No. 1051.

On writ of error to the Circuit Court of the fifth judicial circuit of the United States, in and for the northern district of Florida, at Pensacola.

S. C. Cobb, being duly sworn, says that he is the president of the Pensacola Ice Company, plaintiff in error in the above cause; that he is a citizen and resident of the city of Pensacola, Florida, and is well acquainted with the value of real estate in said city; that the said plaintiff in error bought from W. L. Wittich for the sum of $8,000, on October 25th, 1881, certain property in the water front of the city of Pensacola; more particularly described in the deed attached to the affidavit of L. H. Sellars, of date January 8, 1884, in the cause; that the premises in controversy are included in the property conveyed by said deed, and furnished the inducement for the said purchase, and constitute in value three-fourths ($\frac{3}{4}$) or seven-eighths ($\frac{7}{8}$) of the whole of said property conveyed by said deed; the said premises in controversy being the only portion of the property conveyed in said deed which is filled in, and the only portion upon which there are any improvements, the remainder being under water of a depth of from ten (10) to fifteen (15) feet; and that the Pensacola Ice Company, prior to its purchase of the said property from W. L. Wittich, leased a portion of the property in controversy from said Wittich, at an annual rental of six hundred (600) dollars.

S. C. COBB,
President Pen. Ice Co.

Sworn to and subscribed before me this 14th January, 1884.

[SEAL.] W. W. WHARTON,
Clerk of U. S. Circuit Court Nor. Dist. of Fla.

(Endorsed:) Pensacola Ice Company *vs.* David Perry; affidavit of S. C. Cobb.

In the Supreme Court of the United States.

Pensacola Ice Company, pl'ff in error,
vs.
David Perry, defendant in error. } No. 1051.

On writ of error to the Circuit Court of the fifth judicial circuit of the United States, in and for the northern district of Florida, at Pensacola.

L. H. Sellars, secretary of the Pensacola Ice Company, pl'ff in error, being duly sworn, says that on the 25th day of October, A. D. 1881, the said plaintiff in error purchased from W. L. Wittich the property described in the deed, a certified copy of which is hereto appended, marked "A," for the price named therein, to wit, $8,000; that the said property includes the real estate in controversy in this suit, which said property or real estate in controversy, and for which judgment was rendered in the said Circuit Court, constituted and constitute three-fourths (¾) in value of the property conveyed by said deed, and that said property in controversy is worth not less than the sum of $6,000.

L. H. SELLARS.

Sworn to and subscribed to before me this 8th day of January, 1884.

[SEAL.] W. W. WHARTON,
Clerk U. S. Circuit Court, Nor. Dist. of Fla.

"A."

Know all men by these presents, that we, W. L. Wittich and M. O. Wittich, his wife, for and in consideration of the sum of eight thousand dollars, ($8,000,) to us in hand paid by the Pensacola Ice Company, the receipt whereof is hereby acknowledged, have bargained, sold, and conveyed, and by these presents bargain, sell, convey, and grant unto the said Pensacola Ice Company the following-described property, to wit: The east one-half (E. ½) of block forty-nine, (49,) the east one-half (E. ½) of block ninety-five, (95,) and the east one-half (E. ½) of block one hundred, (100,) in the water front of the city of Pensacola, Escambia county, Florida, according to the plan of said water front drawn by Theodore Moreno, together with the tenements and hereditaments and appurtenances thereunto belonging or in anywise appertaining. To have and to hold the aforesaid-described property, together with the tenements, hereditaments, and appurtenances unto the said Pensacola Ice Company, its successors and assigns forever. And we, the said W. L. Wittich and M. O. Wittich, his wife, covenant for ourselves, our heirs, executors, and administrators, that we and they shall and will forever warrant and defend the title of the said property unto the said Pensacola Ice Company, its successors and assigns, against the lawful claims of all persons whomsoever.

In witness whereof we have hereunto set our hands and seals this 25th day of October, A. D. 1881.

W. L. WITTICH. [SEAL.]
M. O. WITTICH. [SEAL.]

Signed, sealed, and delivered in presence of—
M. D. WHITE.
J. S. LEONARD.

STATE OF FLORIDA, }
County of Escambia. }

Before the subscriber personally appeared W. L. Wittich and M. O. Wittich, his wife, both known to me personally to be the individuals described and who acknowledged that they executed the foregoing deed for the uses and purposes therein set forth; and the said M. O. Wittich, on a private examination by me, held separate and apart from her said husband, acknowledged that she executed the same freely and voluntarily without fear, compulsion, apprehension, or constraint of or from her said husband, and for the purpose of renouncing and relinquishing all her right of dower in and to the said property.

Given under my hand and official seal this 25th day of October, A. D. 1881.

[SEAL.] J. S. LEONARD, *N. P.*

STATE OF FLORIDA, }
County of Escambia. }

I hereby certify that the foregoing is a true and correct copy of a deed from W. L. Wittich and M. O. Wittich, his wife, to the Pensacola Ice Company, as the same remains of record in Book "X" of deeds of said county, at page 525, Oct. 26th, 1881.

Witness my hand and seal official this 3rd day of January, A. D. 1883.

[SEAL.] F. E. DE LA RUA,
Cl'k C't Court, Escambia county, Fla.
Per JOHN DE LA RUA.
Deputy Clerk.

In the Supreme Court of the United States.

The Pensacola Ice Company, plaintiff in error, }
vs.
David Perry, defendant in error. }

On writ of error to the Circuit Court of the fifth judicial circuit, in and for the northern district of Florida, at Pensacola.

W. L. Wittich, being duly sworn, says that he is a citizen and resident of the city of Pensacola, Florida, and is well acquainted with the value of real estate therein; that he, on the 25th day of October, A. D. 1881, sold for $8,000, to the Pensacola Ice Company, plaintiff in error in above suit, the following described property in the water front of the city of Pensacola, to wit: The east one-half (½) of block forty-nine (49), the east one-half (½) of block ninety-five (95), and the east one-half (½) of block one hundred (100), a portion of which is the property in controversy in said suit; that the said land in controversy was made by affiant in water of from eight (8) to ten (10) feet in depth by filling with stone, rock and ballast, at a cost of $2,500 in addition to the cost of the water lots themselves; that the whole of said property, together with the buildings thereon, was, at the time of said sale, and now is, worth not less than the sum of eight thousand dollars; and that the portion thereof in controversy in the said suit is the portion upon which are erected the said buildings (which were completed by affiant in 1881 at a cost of $4,000), and was at the time of said sale, and now is, worth not less than $7,000; and that a portion of said premises in controversy was, prior to his sale thereof to Pensacola Ice Company, leased at the annual rental of six hundred dollars ($600).

W. L. WITTICH.

Sworn to and subscribed before me this 11th day of January, A. D. 1884.

[SEAL.] W. W. WHARTON,
Clerk U. S. Circuit Court Nor'n Dist. of Fla.

In the Supreme Court of the United States.

Pensacola Ice Company, plaintiff in error,
vs.
David Perry, defendant in error. } No. 1051.

On writ of error to the Circuit Court of the fifth judi-

cial circuit of the United States, in and for the northern district of Florida, at Pensacola.

George S. Wells, being duly sworn, says that he is the mayor and a citizen and resident of the city of Pensacola, Florida, and is well acquainted with the value of real estate in Pensacola and vicinity; that he knows the premises in controversy in above suit, and that they are worth not less than the sum of seven thousand dollars, ($7,000.)

GEO. S. WELLS.

Sworn to and subscribed before me this 14th day of January, 1884.

[SEAL.] W. W. WHARTON,
Clerk U. S. Circuit Court, Nor. Dist of Florida.

In the Supreme Court of the United States.

Pensacola Ice Company, plt'ff in error,
vs.
David Perry, def't in error. } No. 1051.

On writ of error to the Circuit Court of the fifth judicial circuit of the United States, in and for the northern district of Florida, at Pensacola.

J. M. Tarble, being duly sworn, says that he is a citizen and resident of the city of Pensacola, and the collector of customs of the port of Pensacola, and is well acquainted with the value of real estate in said city; that he is well acquainted with the property in controversy, having, under contract with W. L. Wittich, the then owner, filled up the same with stone rock and ballast, (prior to said filling the property having been covered with water of a depth of from eight (8) to ten (10) or eleven (11) feet,) at a cost to said Wittich of about twenty-five hundred dollars, and that the said premises are worth not less than seven thousand dollars, ($7,000.)

J. M. TARBLE.

Sworn to and subscribed before me, this 14th day of January, 1884.

[SEAL.] W. W. WHARTON,
Clerk U. S. Circuit Court, northern district of Florida.

In the Supreme Court of the United States.

Pensacola Ice Company, pl'ff in error,
vs.
David Perry, defendant in error. } No. 1051.

Writ of error to the Circuit Court of the fifth judicial circuit of the United States, in and for the northern district of Florida, at Pensacola.

Peter Knowles, being duly sworn, says that he is and has been for forty-two years a citizen and resident of Pensacola, Florida; that for twenty-two years he has been actively engaged in buying and selling real estate in said city and vicinity, and is well acquainted with the value of real estate in said city, and particularly in the water-front thereof, much of which he has bought and sold; that he knows the property in controversy in above suit, and that the same is worth not less than $6,000.

PETER KNOWLES.

Sworn to and subscribed before me, this 14th day of January, A. D. 1884.

W. W. WHARTON,
Clerk U. S. Circuit Court, northern district of Florida.

In the Supreme Court of the United States.

Pensacola Ice Company, plaintiff in error,
vs.
David Perry, defendant in error. } No. 1051.

On writ of error to the Circuit Court of the fifth judicial circuit of the United States, in and for the northern district of Florida, at Pensacola.

Benjamin R. Pitt, being duly sworn, says that he is a

citizen and resident of the city of Pensacola, Florida, owning a lumber and planing mill in said city, and furnishing materials for building houses, and contracting for building houses, and that he almost uniformly takes liens upon the property upon which said houses are situated for the materials furnished; and that he owns much real estate in the city of Pensacola; and that he is well acquainted with the value of real estate in said city; that he knows the property in controversy, and under contract with W. L. Wittich, the then owner, raised the roof of one of the buildings thereon in spring of A. D. 1881; and that the said property is worth not less than six thousand dollars ($6,000).

B. R. PITT.

Sworn to and subscribed before me this 14th January, 1884.

[SEAL.] W. W. WHARTON,
Clerk U. S. Court, Nor. Dist. of Fla.

(Endorsed:) Pensacola Ice Company *vs.* David Perry; affidavit of Benjamin R. Pitt.

In the Supreme Court of the United States.

Pensacola Ice Company, plaintiff in error,
vs.
David Perry, defendant in error. } No. 1051.

On writ of error to the Circuit Court of the fifth judicial circuit of the United States, in and for the northern district of Florida, at Pensacola.

S. S. Harvey and G. E. Turcheinus and W. W. Richards, each being duly sworn, says that he is a citizen and resident of the city of Pensacola, Florida, and is well acquainted with the value of real estate in Pensacola and vicinity; that he knows the premises in controversy in

above suit, and that they are worth not less than the sum of ($6,000) six thousand dollars.

S. S. HARVEY.
W. W. RICHARDS.
G. TURCHEINUS.

Sworn and subscribed to before me this 14th January, 1884.

[SEAL.] W. W. WHARTON,
Clerk U. S. Circuit Court, Nor. Dis. of Fla.

(Endorsed:) Pensacola Ice Company *vs.* David Perry; affidavit of S. S. Harvey et al.

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120-218

Supreme Court of the United States.

Pensacola Ice Company,

vs.

David Perry.

100.

October Term, 1886.

STATEMENT AND APPLICATION OF DEFENDANT IN ERROR.

The defendant in error concedes the correctness of the eighth assignment of error, in that the verdict of the jury did not state the quantity of the estate of the plaintiff, and describe the land by its metes and bounds, by the number of the lot and other certain description, and that the judgment of the court thereupon did not state the quantity of the estate, and give description of the land recovered, as required by the act of Florida, February 22d, 1881 (McClellan's Digest, page 481), as follows :—

SECTION 4. The verdict in actions of ejectment shall, when for the plaintiff, state the quantity of the estate of the plaintiff, and describe the land by its metes and bounds, by the number of the lot or other description.

SEC. 5. The judgment awarding possession shall, in like manner, state the quantity of the estate, and give description of the land recovered.

The judgment of the court below is vitiated by this error.

Application is therefore made for reversal of the judgment on

this ground alone, and that a *venire facias de novo* be directed in accordance with the rule of this court as follows:—

Where error exists in the proceedings of the Circuit Court which will justify a reversal of its judgment, this court may send back the cause, with such instructions as the justice of the case may require.

Binney vs. *Chesapeake & Ohio Canal Co., 8 Peters, 219.*

WAYNE MacVEAGH,
For Defendant in Error.

120 — 318

Supreme Court of the United States.

No. 354.

PENSACOLA ICE CO., } Plaintiff in Error.

vs.

DAVID PERRY, } Defendant in Error.

OCTOBER TERM, 1885.

Writ of Error to Circuit Court of the United States in and for the Northern District of Florida.

Brief of Wm. A. Blount, Attorney for Plff. in Error.

Supreme Court of the United States.

No. 354.

PENSACOLA ICE CO., Plaintiff in Error.

vs.

DAVID PERRY, Defendant in Error.

OCTOBER TERM, 1885.

Writ of Error to Circuit Court of the United States in and for the Northern District of Florida.

Brief of WM. A. BLOUNT, Attorney for Plff. in Error.

STATEMENT OF CASE.

This is a suit in ejectment, the property sued for being described in the declaration as "so much of the water front of the City of Pensacola as lies between the extension into the Bay of Pensacola of the west line of the parcel of ground in Pensacola, known as the Coleman grant (the same being the parcel granted to one Coleman by the Spanish Government, on the 20th day of January, 1807), and the wharf extending into the Bay of Pensacola known as Commandancia Wharf."

Record, pp. 3 and 4.

To this declaration the plaintiff in error pleaded "not guilty," which under the law of Florida, puts in issue the plaintiff's title and right of possession, and allows the defendant to avail himself of every legal defense.

Without further pleading the parties went to trial.

The defendant in error introduced in evidence the following papers:

1. A title in form (in the Spanish language but accompa-

nied with a translation and a figurative plan of a grant from the King of Spain, through the Intendant, Juan Ventura Morales, to James Coleman, of date January 20th, 1807,), to a lot in the city of Pensacola with the following descriptions: "on the northern side it binds with the fence of the Quarters, and a portion of the Square of Arms, with an extension of 145 feet of London; on the south with the margin of the water of the Bay of Pensacola at high tide, a passage being left free; on the East with the lot granted to Joaquin Barela, and vacant lot; and on the west with the reserved street between the Court fence and Government garden, and the most western limit of the lot of the interested party, parallel with said fence, which street is 42½ English feet wide."

Record, pp. 14 and 15.

2. A copy from the Public Archives of West Florida, containing an extract from proceedings before United States Land Commissioners, showing a confirmation to Santiago Coleman of a lot in the city of Pensacola, conforming generally to the description of the lot granted to James Coleman, but being described as fronting on the Bay, and as being 201 feet in depth.

Record, pp. 15 and 16.

3. Letters of Administration of date July 28, 1866, granted by the Probate Judge of Escambia County, Florida, to John Quinlan upon the estate of James Coleman.

Record, p. 16.

4. An order by said Judge authorizing the said John Quinlan, as administrator, to sell the real estate described in the petition for the order of sale, towit: Lot "F," and other lots named.

Record, pp. 16 and 17.

5. A deed of date December 4, 1867, made by John Quinlan, under authority of said order, to R. M. Bushnell for "that lot of ground known in the plan of the city of Pensacola as lot "F," together with the rights and privileges thereto pertaining."

Record, pp. 17 and 18.

6. A deed of date December 4, 1868, from Bushnell to four persons, of whom defendant in error was one, to the lot of ground in the city of Pensacola, "known and designated on the plan of the said city of Pensacola as lot "F," being the same which was granted by the Spanish Government to Rev. James Coleman on the 20th January, 1807, and by the Right Rev. John Quinlan as administrator of the estate of James Coleman conveyed to the said Richard M. Bushnell on the 4th day of December, A. D. 1867, to which said grant and plat annexed thereto and said deed of conveyance reference is hereby made for a fuller description of the said real estate hereby conveyed. Together with all the rights and appurtenances thereto belonging."

Record, p. 19.

7. A lease dated April 28, 1871, from the "owners of Coleman lot" to the P. & L. R. R. Co., of "the blachsmith shop on said lot."

Record, p. 20.

8. A lease of date January 5th, 1869, from defendant in error and his co-tenants to W. E. Anderson, for a certain portion of the "Bay or water front in the city of Pensacola, Florida, which is in front of lot 'F,'" between certain lines which do not embrace the property in controversy.

Record, p. 21.

9. An acknowledgment of date Dec. 16, 1869, from Anderson, Hyer & Co., that they occupied the "water front or shallows in front of the Coleman lot under a lease taken from the owners of said lot last year."

Record, p. 20.

10. A lease of date October 20th, 1881, from defendant in error to plaintiff in error, of a "portion of the water front of the Coleman lot in the city of Pensacola, County of Escambia, and State of Florida," the said portion not including the property in controversy.

Record pp. 22 and 23.

The defendant in error then introduced himself as a witness

and testified, against the objection and exception of the defendant, that he was induced to purchase the property mentioned in the foregoing deeds by representation of R. L. Campbell (one of the attorneys of plaintiff in error) that said real estate extended to the channel.

He also testified that upon said purchase he went into possession as riparian owner and held possession ever since except when a portion of the water front was occupied by one George S. Wells, whom he ejected upon a judgment in the Circuit Court of the United States for the Northern District of Florida. He read in evidence, against the objection and exception of the defendant, the said judgment.

He further testified that at the time of his purchase there was a blacksmith shop on the beach for which he was paid rent.

Record, p. 23.

Albert Hyer, another witness for the plaintiff, testified that he and his firm had leased in 1871 from the owners of the Coleman lot, and continued up to the time of this suit to use, water front in front of the Coleman lot, such water front not including the property in controversy.

Record p. 24.

C. L. LeBaron, another witness for the plaintiff, testified that in 1868, he by permission of the owners of the Coleman lot built two boat houses in the Bay in front of said lot which he maintained for several years. There was then a wharf or a remnant of a wharf at the foot of Commandancia Street, which wharf had been built in 1858. He produced and read certain correspondence between himself and one George S. Wells relating to this water front.

Record, pp 23 and 24.

Wm. H. Davidson, another witness for the plaintiff, testified that "he is the city surveyor; that he made a survey to show the water front of the Coleman grant, if the east and west lines thereof were continued without deflection into the bay; that the map or plan hereto annexed, marked "A," shows what space would be embraced by such extension of said lines

into the bay, and that said lines on said map are extended over the wharf at the foot of Commandancia street, as *known* in the plan of the city of Pensacola; that said extension of the lines of said grant would embrace the property embraced in this action, but that to embrace it said lines must be extended over and beyond said Commandancia street wharf, or any extension of Commandancia street into the bay, as represented on diagram "B," but not over and beyond the extension of the 42½-feet street described in Coleman grant as lying between that grant and Governor's Garden. That street extended would be entirely west of extended west line of Coleman lot, as represented on diagram—that is to say, the extended west line of Coleman lot is the extended east line of the 42½-feet street; that the east and west lines of lot "F," as known in the Spanish or Cabildo plan of Pensacola, if extended into the bay, would not embrace the property in this suit, and the western line would run along the dotted line represented on the western margin of the diagram and running parallel with delineations of Commandancia street wharf thereon; that the diagram represents the extension of the lines of the Coleman grant and not of the line of lot F, as known on the Spanish plan of the city. The diagram marked "B" having been shown to the witness, he testified: "I recognize lot 'F' in said diagram as the Coleman lot, but I do not recognize the figures and distances in the plan of said city of Pensacola."

Record, pp. 24 and 25.

The defendant in error introduced Vol. 4, American State papers in evidence and rested. The plaintiff in error introduced in evidence —— pages of Vol. 4, American State papers and rested.

The court delivered its charge, the defendant requested ten instructions of which the court gave the first and ninth and refused to give the remainder.

The plaintiff in error excepted to the charge and the refusal to give the instructions asked, and the jury retired and returned a verdict for the defendant in error.

ASSIGNMENT OF ERRORS.

Upon this statement of the case, the plaintiff in error assigns as errors,

1. The action of the court in permitting the defendant in error to testify that he was induced to purchase the property mentioned in his deed, by the representations of R. L. Campbell, one of plaintiff in error's attorneys, that it extended to the channel.

2. The action of the court in allowing the defendant in error to introduce in evidence the record of the judgment obtained by him against George S. Wells.

3. The charge of the court which was as follows:

"That the plaintiff had shown a good paper title as riparian owner of the submerged land lying in front of the Coleman grant, and that under the statute law of Florida the plaintiff was authorized to continue and prolong the eastern and western lines to the channel of the bay; and if the jury were satisfied from the evidence that the continuation of the said eastern and western lines of said grant to the channel of the bay would embrace the property in this suit they must find for the plaintiff."

4. The refusal of the court to give the fourth special instruction requested by defendant, which was as follows:

"That if the jury are satisfied from the evidence that the extension of the eastern and western lines of lot "F," as known in the plan of the city of Pensacola, would not embrace the property for which the plaintiff sues, then they must find for the defendant."

5. The refusal of the court to give the fifth special instruction requested by defendant, which was as follows:

"That the points from which the lines of riparian owners must extend out into rivers and harbors are those points at which those lines strike the margin of such rivers and harbors and at right angles with the shore; and therefore if the jury are satisfied from the evidence that the east and west lines of the lot claimed by the plaintiff if extended at right

angles with the shore would not embrace the property claimed by the plaintiff in this suit, then they must find for the defendant."

6. The refusal of the court to give the special instruction, 5*a*, asked for by the defendant, which was as follows:

"If the jury are satisfied from the evidence that the property claimed by the plaintiff in this suit lies west of Commandancia street, as known in the plan of the city of Pensacola, or west of the extension of said street out into the bay, and that the said property cannot be included within the east or west lines of the Coleman lot extended into the bay without crossing said Commandancia street or its extension into the bay, then the jury must find for the defendant."

7. The refusal of the court to give the tenth special instruction requested by defendant, which was as follows:

"That a party who takes under a deed which describes a lot or parcel of land as a lot known in a certain —— of a city or town, takes under such map, and cannot be permitted to dispute the validity of that title. If, therefore, the jury in this case find that the plaintiff in this case claims under a deed which described the lot in respect to which he claims the property mentioned in the declaration, he cannot be permitted to deny the validity of that plan or assert any right inconsistent with said plan."

8. The rendition of judgment by the court upon the verdict of the jury.

ARGUMENT.

FIRST ASSIGNMENT.—The error in the action of the court in permitting defendant in error to testify as to Campbell's representations to him is apparent. The representation could not enlarge the title of the plaintiff, and testimony concerning it could have no possible purpose or effect other than to prejudice the case of the plaintiff in error.

SECOND ASSIGNMENT.—The defendant in error should not have been permitted to give in evidence the record of the ejectment suit between him and Geo. S. Wells, because the property involved was not the same and it was *res inter alios acta*. If it were intended, as argued below, to extend the limits of the deed, by showing the possession taken under the judgment, without objection from John Quinlan, and thus show the intent of the parties by their acts, the answers are evident. Such evidence is never admissible when the terms of the deed are clear. It is never admissible to annex land to land, but only to define appurtenances. It was not shown that Quinlan knew of their act of taking possession. The act was not shown to be contemporaneous with the deed. Quinlan's intent or design would have effected nothing, because his *power* to convey was limited by the tenor of the order of the Probate Court.

THIRD ASSIGNMENT.—The court charged as the law of the case but one proposition, *i. e.*, that the defendant in error was entitled to recover such submerged land as lay between the extended lines of the Coleman grant, and left to the jury but one question, *i. e.*, whether the land sued for lay within the extension of these lines.

This charge was an entirety, its several portions being each an essential part of the whole, and if one portion be erroneous, the whole will be so. But, even if the different portions are independent, we think that we can show radical errors in each.

The first portion related to the title of the defendant in error to submerged land in front of the Coleman grant.

This was claimed by the defendant in error by virtue of the provision of a statute of Florida, which is as follows:

AN ACT to benefit Commerce.

WHEREAS, It is for the benefit of Commerce that wharves be built and Warehouses erected for facilitating the landing and storage of goods; and whereas, the State being the proprietor of all submerged lands and water privileges, within its boundaries, which prevents the riparian owners from improving their water-lots: Therefore,

SECTION 1. ***Be it enacted by the Senate and House of Represen-***

tatives of the State of Florida in General Assembly convened, That the State of Florida for the consideration above mentioned, divest themselves of all right, title and interest to all lands covered by water, lying in front of any tract of land owned by a citizen of the United States, or by the United States, for public purposes, lying upon any navigable stream, or Bay of the Sea, or Harbor, as far as to the edge of the channel, and hereby vest the full title to the same in and unto the riparian proprietors, giving them the full right and privilege to build wharves into streams or waters of the Bay or Harbor as far as may be necessary to effect the purposes described, and to fill up from the shore, bank or beach, as far as may be desired, not obstructing the channel, but leaving full space for the requirements of Commerce, and upon lands so filled in, to erect warehouses or other buildings, and also the right to prevent encroachments of any other person, upon all such submerged land in the direction of their lines continued to the channel, by bill in chancery, or at law, and to have and maintain action of trespass in any Court of competent jurisdiction in the State, for any interference with such property, also confirming to the riparian proprietors all improvements which may have heretofore been made upon submerged lands, for the purposes within mentioned.

SEC. 2. *Be it further enacted*, That nothing in this act contained shall be so construed as to release the title of the State of Florida, or any of its grantees, to any of the swamp or overflowed lands within the limits of the same, but the grant herein contained shall be limited to those persons and body corporate owning lands actually bounded by, and extending to low water mark, on such navigable streams, Bays and Harbors.

[Passed the House of Representatives, December 26. 1856. Passed the Senate, December 27, 1856. Approved December 27, 1856.]

The court below charged the jury that the defendant in error had shown good paper title as riparian owner to the submerged land. As he did not claim under any conveyance of the submerged land, but under a conveyance of the upland, it is clear that he could not have a good *paper* title, because the title would depend upon the question of fact as to whether the upland was or was not so bounded by the shore as to give riparian rights. The court took from the jury the solution of this question of fact, and therein it erred.

But the assertion of the court that the defendant in error had shown title of any kind to the land was erroneous. Not only had he failed to show such title, but the evidence which he introduced showed affirmatively the non-existence of some of the facts essential to confer title upon him.

All his rights were derived under the Act of 1856, but under this Act it was necessary for him to show affirmatively:—

1. That he on December 27, 1856, owned the *true title* to an upland which at that date was bounded by *low* water mark.

The rights of claimant under this Act must all be referred to December 27, 1856. The act was a grant *in presenti* to the persons coming within its provisions, of the title to the submerged land in front of their uplands. Before its passage these persons had possessed the common law riparian rights of access, wharfage, &c., as far as obtainable in navigable streams, but upon its passage they became absolutely vested with a fee simple title to the soil under the water. This soil thereby became capable of private appropriation and possession, and became land in the hands of the grantee. It was no longer an appurtenance to the shore land because it was itself land, and land is never an appurtenance to land.

Jones vs Johnston, 18 How., 150.
Harris vs Elliott, 10 Pet., 25–54.

Of course, then, the conveyance of it could not be effected by a deed to other land, but only by a conveyance embracing it with proper words of transfer.

Rivas & Koopman vs Solary, 18 Fla., 126.
Jones vs Johnston, 18 How., 150.

It follows then, necessarily, that one claiming submerged land in navigable waters between the shore and the channel must prove either that he owned the upland reaching the shore on December 27, 1856, and thereby became a grantee of the State of such submerged land, or that he derives through conveyance from such grantee. No deed to the submerged land is shown, and the conveyance of the upland to the defendant in error was made in 1868, after the accrual of the riparian right.

Jones vs. Johnston, 18 How., 150.

But even if the conveyance, subsequent to December, 27, 1856, of the upland would pass the submerged land as appurtenant to it, it was incumbent upon the defendant in error to

show that the upland conveyed had at that date a water boundary. Such boundary before or after that date would not bring the owner of the title within the Act, because its benefits are based upon the existence of facts upon the day of its passage. There is no proof of the existence of a shore line on December 27, 1856, as a boundary to the upland claimed by him.

And such water boundary must have been a *low* water boundary. It is conceded by the defendant in error that this upland never reached low water at any time, but he contends that the 2nd Section of the Act, which contains the provision is in the ~~act~~ of a *proviso* and that it is repugnant to the body of the Act and therefore inoperative.

This argument is based entirely on the assumption that there was in 1856 no land in Florida the shore boundary of which extended to *low* water mark, and that therefore the Act would be without meaning if its operation be limited to such lands as had a *low* water boundary.

The fact, however, is assumed without any evidence in the record upon which to found it, and is in opposition to the facts in the case of Rivas & Koopman vs. Solary, 18 Fla., in which the title extended to low water mark And if there were evidence it would be extrinsic the statute, which in its terms is clear, and could not be regarded.

Smith vs. Bell, 10 M. & W., 378.

But if it be a fact, it by no means follows that the second section is void.

This clearly is not an exception or a saving clause but a distinct provision in the statute in the nature of a *proviso.*

As a distinct section it is entitled to as much weight as the other section, and if they are repugnant both must fall.

But indeed, being the later expression of the legislative will it must supersede the former.

Quick vs. Whitewater Township, 7 Ind., 570.

Packer vs. Sunbury, &c., 19 Penn. St., 211.

If it be viewed in the light of a *proviso,* then as such it

must stand, and if repugnant to the purview of the statute, that purview must fall.

Townsend vs. Brown, 4 Zabrisk., 80.
Rex vs. Justices of Middlesex, 2 B. & A., 818.
Potter's Dwarris on Statutes, p. 118 and notes.

Admitting however for the sake of argument, that this contention of the defendant in error is correct, and that the operative portions of the Act only require a *high* water boundary, still the evidence for him not only failed to show any water boundary whatever, to his upland, but showed affirmatively that it had none.

The only title to the upland which he claims is through the deeds from Quinlan to Bushnell and from Bushnell to him and others. Both of these deeds describe the land as the lot of ground known and designated in the plan of the city of Pensacola as "lot F." There was no description by metes and bounds and the only method of identification became a reference to the plan of the city of Pensacola, and it thereby became a part of the deed.

Alden vs. Pinney, 12 Fla.
Noonan vs. Braley, 2 Black., 499.
Jones vs. Johnston, 18 How., 150.

He contended below that there was no plan of the city of Pensacola in evidence. Such contention is fatal to his right to recover, for that depends upon his showing affirmatively that by the plan of the city of Pensacola lot F. had a water boundary. There was no parol evidence, (even if such had been admissible in the presence of the map, or in its absence, without showing its loss or destruction) to establish that by such plan lot "F." had a water boundary, and if the plan is not in evidence, then there was a total failure of the plaintiff to establish such water boundary and he was not entitled to recover.

The plan, however, is in evidence, and it, with or without the evidence, establishes that lot F. never had a water boundary, but was separated from the water by an open passage

way. Such passage way, or other intervening space to which defendant in error had not title would defeat the accrual of riparian rights under the statute.

Schools vs. Risley, 10 Wall., 91.
Banks vs. Ogden, 2 Wall., 57.
Sullivan vs. Moreno, 19 Fla., 225.
Bates vs. Ill. Cent. R. R. Co., 1 Black., 204.
Alden vs. Pinney, 12 Fla.

The other evidence in the case establishes the same thing. The English plan of the city of Pensacola (Record, pp. 24 and 25) shows that before the Spaniards obtained possession the last time, streets and lots were not laid off in that part of the town, but that the space was a military square (Am. State Papers, Vol. 10, p. 149, No. 11). The grant to Coleman and Pintado's report to the Cabildo (Am. State Papers, Vol. 14, p. 150) show that in 1807, when the grant was made, they were still not laid off. This portion of the town was first laid off symmetrically in 1813 and the name of lot "F" given to a *portion* of Coleman's grant, such portion being separated from the bay by an open way or street (*Ib.* pp. 140-141). The Cabildo adopted this plan (*Ib.* p. 150), Coleman acquiesced in it (*Ib.* p. 151), and was compensated for the loss of ground on the front by an addition on the west (*Ib.* p. 150), and this designation of this particular piece of ground as lot "F." became a fixed fact and remained so to the present day, as evidenced by Diagram "B," by Diagram "A," (in which the number and configuration of the circumjacent lots—"F." being omitted by the defendant in error for the purposes of this suit—accord with Pintado's plan and with Diagram "B") by John Quinlan, Coleman's administrator's description of it as lot "F.," and by Davidson's testimony that he recognized lot "F." as the Coleman lot.

The theory of the defendant in error was that he succeeded to all the rights of Coleman, but this is negatived by the limit to Quinlan's power to sell and by his own deed, unless he had proved that lot "F." was coterminous with the Cole-

man grant, and, as we have shown, all the testimony negatives this.

The defendant in error also endeavored, as shown by the record of his own testimony, that of Hyer, and LeBaron, by the leases in evidence and by the judgment against and eviction of Wells, to show that he had enlarged his rights beyond those conferred by his deed, by taking possession of property to the south of lot "F." But this could avail him nothing: because riparian rights are attached to the *true title*, and do not adhere to a possessory title,

Sullivan vs. Moreno, 19 Fla., 225-227.

Watkins vs. Holman, 16 Pet., 25-7

because the land occupied by the R. R. Co. (Record, p. 20) was not shown to have reached the water; and because the other portions which he had in possession by his tenants were portions of the submerged land, and of course could carry no riparian rights. None of them embraced the property in controversy.

It was further necessary for the defendant in error to show that:

The person who owned the title was on December 27, 1856, a citizen of the United States, for to citizens of the United States alone were the benefits of the Act extended. The States have a right to prohibit aliens from holding real estate within their limits, and Florida to the extent shown in this Act has exercised that right.

The court then erred in the first portion of its charge, because the defendant in error had not shown a good paper (or other) title as riparian owner of the submerged land in front of the Coleman grant.

It was also necessary for the defendant in error to prove that the land in controversy was so situated with regard to the upland as to belong to it by virtue of the provisions of the Riparian Act of 1856.

This involved a determination of the method of apportioning the batture among the riparian proprietors, and in its decision as to this method the court erred. Such a rule must be

adopted as will divide the submerged land equitably among all the owners of the upland. Such equitable division can not be had if the angles at which the lines of each owner strikes the shore be allowed to have a controlling weight.

Rust vs. Benton, &c., 6 Pick., 169.
Piper vs. Richardson, 9 Metc., 158.
Curtis vs. Francis, 9 Cush., 438.

For it is obvious that the shore apportioned to diverging lines would be disproportioned to that apportioned to converging lines. And the rule would be incapable of application because the diverging lines of adjacent uplands would meet and their rights conflict at varying distances from the shore. Nor can the size or shape of the upland have any weight, for it is evident that the amount of land to be owned under the water cannot in anywise depend upon the amount owned on shore.

The only rule which can be adopted is to apportion the batture upon the basis of the length of the shore line of each upland proprietor, and the only inquiry in each case is as to the equitable division upon this basis.

Jones vs. Johnston, 1 Black., 209.
Gray vs. DeLuce, 5 Cush., 12.
Deerfield vs Ames, 17 Pick., 45.
Stone vs. Benton, &c., 14 Allen, 230-234.

In this case the general shore line (as shown by Diagram "B") was straight and the batture should have been divided between parallel lines drawn perpendicular to such general line.

Porter vs. Sullivan, 7 Gray, 442.
Sparhawk vs. Bullard, 1 Metc., 106.
Knight vs. Willdens, 2 Cush , 210.
Deerfield vs. Ames, 17 Pick., 45–47.

However, whatever may be the rule applicable in this particular case, the rule enunciated by the court cannot be, for it does not make the length of the shore line the basis and can be applicable to no state of facts except where the side lines of the upland strike the shore perpendicularly.

The provisions of the Act of 1856 do not alter the general rule. It vests the title to land "lying in front of" the upland and leaves the definition of "in front of" to be fixed by the general rules. The provision relied upon by defendant in error, that riparian owners may prevent encroachments upon "such submerged land contained in the direction of their lines to the channel," may as well refer to the lines obtained by the application of the foregoing rules to the particular case, as to the side lines on shore, and the court will adopt that construction which conserves, rather than that which destroys, all rights.

FOURTH ASSIGNMENT.—The defendant in error had shown title in himself only to lot "F.," and not to the Coleman grant, and his riparian rights could only arise from his ownership of the former.

FIFTH ASSIGNMENT.—This instruction was in strict accordance with the law as shown heretofore, and should have been given.

SIXTH ASSIGNMENT.—Unless the defendant in error was the only riparian proprietor in the city of Pensacola, his lines could not be extended in the manner claimed, if their extension in that way deprived other riparian proprietors, (*e. g.*, the city at the end of its street) (New Orleans vs. U. S., 10 Pet.) and the riparian proprietor to the West, of their water front, then such extension was not permissible and a refusal to so charge was error.

SEVENTH ASSIGNMENT.—

Alden vs. Pinney, 12 Fla.

Noonan vs. Braley, 2 Black., 499.

EIGHTH ASSIGNMENT.—Under the Act of Florida, approved February 22d, 1881, the 1st and 2nd sections of which are as follows:

SEC. 4. The verdict in actions of ejectment shall, when for the plaintiff, state the quantity of the estate of the plaintiff, and describe the land by its metes and bounds, by the number of the lot and other certain description.

SEC. 5. The judgment awarding possession shall, in like manner,

state the quantity of the estate, and give description of the land recovered.

it was the duty of the jury to find in its verdict the quantity of the estate of the defendant in error, and of the court to state such quantity in its judgment, and a judgment which does not state such quantity, is erroneous.

Neal, et. al. vs. Spooner, et al., 20 Fla., 44.
Coffee vs. Groover, et. al., 20 Fla., 83.
Rivier vs. Pugh, 7 Heisk., 715.
Rogers vs. Linscheimer, 50 N. Y., 646.
Long vs. Linn, 71 Ill., 152.

There can be no presumption that the general verdict refers to the quantity of the estate alleged in the declaration because there are two counts each alleging a different quantity. If, however, the court below could determine the quantity of the estate for itself when the jury has not done it, it is apparent from the deeds of the defendant in error that he had title to only one-fourth of the land in controversy. If he was entitled to any judgment he was entitled to a judgment for his undivided fourth only, and to a writ to put him into possession of such undivided fourth only.

Dewey vs. Brown, 2 Pick., 387.
Dawson vs. Mills, 32 Penn. St., 302.
Gray vs. Grimes, 26 Mo., 291–303.
Stevens vs. Ruggles, 5 Mason, 221.
Stovall vs. Carmichael, 52 Texas, 383.
Sanford vs. Sanford, 58 Ga., 259.

Respectfully submitted,

WM. A. BLOUNT,
Attorney for Plaintiff in Error.